



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, LRE, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy for Cause, for an order to suspend or set conditions on the landlords' right to enter the rental unit and other issues.

The tenant served the landlords agent in person on January 06, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application as most of them are unrelated to the main issue which is to cancel the Notice to End Tenancy.

I therefore will deal with this issue to cancel the Notice and I dismiss the remaining unrelated disputes.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Should the notice to end tenancy for cause be cancelled?



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Background and Evidence

Both Parties agree that this month to month tenancy started on May 01, 2009. There was a verbal agreement in place for this tenancy and the tenants' share of the rent was \$350.00 per month due on the first of each month.

The tenant testifies that the landlords' agent served her and another tenant with a One Month Notice to End Tenancy for cause on December 31, 2009 to vacate the rental unit on January 31, 2010. This Notice stated that the tenants were repeatedly late paying rent. The tenant states that she has a separate tenancy agreement to the other tenant and has never been late with her rent. The tenant claims she always pays her rent before the due date. The tenant states that the other tenant was unable to pay his rent but she is not responsible for this tenants' debt as they have separate verbal agreements with the landlord.

The landlords' agent testifies that the other tenant shared the unit with the landlord and this tenant moved into the property. She was told they were common law partners and thought they had a shared tenancy agreement hence the One Month Notice being in both tenants names. The landlord has since moved out but would like to return to his unit to live without sharing with tenants.

The tenant testifies that when she received the One Month Notice she questioned the landlords' agent and stated that she was not late with her rent and did not want this type of eviction notice on her rent history. The landlords' agent came to see her with a mutual agreement to end the tenancy on January 31, 2010. The tenant does not dispute that she signed this agreement but claims she was coerced into signing it. The tenant would like to remain at the rental unit until the end of March, 2010 as she has employment at the Olympics.

The landlords' agent testifies that she did not coerce the tenant into signing the agreement to end tenancy. She states that the tenant went through the agreement with her and initialled the errors and signed it willingly. The landlords' agent also states that the tenant has over held at the rental unit and did not vacate as agreed on this mutual agreement to end tenancy. The

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landlords' agent states that the tenant paid rent for February, 2010 which was accepted and a receipt was given for use and occupancy only.

Analysis

I have considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for the reason stated on the One Month Notice and as a result, the One Month Notice to End Tenancy for Cause is cancelled.

However, the tenant has signed a Mutual Agreement to End Tenancy on January 31, 2010 and she has failed to move from the rental unit by this date. The tenant argues that she was coerced into signing this agreement but has presented no evidence to suggest the landlords' agent either coerced or pressurized her into signing the agreement. Consequently, I find this is a binding agreement pursuant to s. 44 (1)(c) of the *Act* and find the landlord is entitled to an Order of Possession based on this agreement. The landlords' agent has requested an Order of Possession to take effect as soon as possible.

Conclusion

The tenant's application to cancel the One Month Notice to End Tenancy is allowed and this Notice dated December 31, 2009 is cancelled.

Due to the mutual agreement to end tenancy on January 31, 2010 I find the landlord is entitled to an Order of Possession. **I HEREBY ISSUE** an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.



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This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 11, 2010.

Dispute Resolution Officer