

DECISION

Dispute Codes: CNC, FF

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Cause issued February 24, 2010; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and this matter proceeded on its merits.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The Landlord's agent gave the following testimony

The Landlord's agent served the Tenant with the 1 Month Notice to End Tenancy for Cause by posting the Notice on the Tenant's door on February 24, 2010. A witness was present.

The Tenant has been repeatedly late paying rent. Rent for December, 2009, was one day late; rent for January, 2010 was 2 days late; and February's rent was one day late. The Tenant paid rent for March, 2010, on time.

The Landlord's witness gave the following testimony

The witness knows that the Tenant did not pay February's rent on time because he saw the Tenant's February rent cheque posted to the Tenant's door on February 2, 2010.

The Tenant gave the following testimony

The Tenant had made a previous application for dispute resolution asking to cancel a Notice to End Tenancy for Cause (for repeated late payment of rent); a reduction in rent for repairs not provided; and an order that the Landlord make repairs to the rental unit. This matter was heard on October 15, 2009, and a decision was rendered on October 16, 2009. The dispute resolution officer granted the Tenant's application to cancel the Notice to End Tenancy; ordered the Landlord to make repairs to the rental unit; reduced the Tenant's rent; and ordered the Landlord to provide receipts to the Tenant for future rent payments.

The Tenant tried to pay the rent in person when it was due, on the first day of each month, but the Landlord's agent was not in her office and did not return his calls. Therefore, the Tenant could not pay rent until the next day. The Tenant denied being late more than one day in January, and stated that January rent was paid on January 2, 2010.

The Tenant provided the Landlord's agent with a cheque for March's rent prior to March 1, 2010, in the amount of \$800.00, with a witness present.

The Tenant believes the Landlord's agent was avoiding him, so he couldn't pay rent on time. The Tenant also believes the Notice to End Tenancy issued February 2, 2010, was issued in retaliation because of the Tenant's previous application.

The Landlord has painted some of the walls, in partial compliance with the order of October 16, 2009, but has not had a professional licensed builder inspect the floor boards for structural damage. A building maintenance person simply screwed down some boards in an attempt to repair the flooring.

The Landlord's agent gave the following response

She was not avoiding the Tenant on the first day of each month. The Tenant was responsible for paying rent on the first day of each month, and could have dropped the rent cheque at the office whether she was there or not. The Tenant had posted the rent cheque for February on his door and had not attempted to come to the office to drop it off.

Analysis

A copy of the Decision dated October 16, 2009, was entered in evidence. At the October 15, 2009 Hearing, the Tenant had disputed that he was late paying rent. The Landlord had alleged that the Tenant was repeatedly late paying rent, but had not provided the Tenant with receipts for rent payments made and did not provide sufficient documentary evidence to support its claim. Therefore, the dispute resolution officer ordered the Landlord to provide the Tenant with receipts for future rent payments. The October 16, 2009, Decision does not clearly state how rent was to be paid by the Tenant. Given the circumstances disclosed at the previous Hearing, and due to the contradictory testimony of the Landlord and Tenant at that Hearing regarding the date rent was paid, I find that it was reasonable for the Tenant to assume that he was to pay rent in person to the Landlord's agent in return for the receipt. Therefore, I cancel the Notice to End Tenancy for Cause issued February 2, 2010. The Tenant is cautioned that he must pay rent on the day that it is due, and I order the Tenant to provide the Landlord with a series of post-dated cheques by delivering the cheques to the Landlord's agent prior to April 1, 2009, with a witness present. The Landlord is ordered to continue to provide the Tenant with receipts for rent payments.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlord. According to the provisions of Section 72 of the Act, the Tenant may deduct the amount of \$50.00 from future rent due to the Landlord.

I note that the Decision of October 16, 2009, made a number of Orders, including the following:

- 1) *The Landlord is to have all of the carpet and underlay removed and discarded from the Tenant's rental unit; and*
- 2) *The Landlord is to have a professional licensed builder inspect the sub-floor in the Tenant's rental unit and provide the Landlord with a written report of the material of the sub-floor, the current condition of the sub-floor, and an itemized list of any required repairs; and*
- 3) *The Landlord is to have a professional licensed builder complete all, if any, of the required repairs to the sub-floor in the Tenant's rental unit; and*
- 4) *The Landlord is to purchase and install new underlay and new carpet into the Tenant's rental unit; and*
- 5) *The Landlord is to repair the drywall, walls, and paint the entire rental unit; and*

- 6) *The Landlord is to acquire documentary evidence that the repairs to the Tenant's deck have been completed.*

The Tenant's monthly rent effective December 1, 2009 will be \$600.00 (\$800.00 less the \$200.00 rent reduction) and will continue to be \$600.00 per month until the Landlord has been issued an Order confirming that the six items listed above have been completed.

Once the six items listed above are completed, the Landlord is required to apply for a dispute resolution hearing in the normal manner, pay the application fee, and provide documentary evidence to support that the six items as set out above have been completed. Both the Landlord and Tenant are required to attend this future hearing.

Copies of the receipts for December, 2009, January, 2010, and February, 2010, were entered in evidence. The Tenant paid rent in the amount of \$800.00 for the months of January and February, and testified that he paid \$800.00 to the Landlord for rent for the month of March, 2010.

It is important to note that the Landlord has not applied for a dispute resolution hearing to obtain the Order of completion and therefore the Tenant may have overpaid rent. I refer the parties to Section 26(1) of the Act, which states:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, **unless the tenant has a right under this Act to deduct all or a portion of the rent.**

(emphasis added)

Conclusion

The Notice to End Tenancy for Cause issued February 2, 2010, is cancelled. The tenancy remains in full force and effect.

The Tenant is ordered to personally deliver a series of post-dated cheques to the Landlord's agent, prior to April 1, 2010, in the presence of a witness.

The Tenant may deduct the amount of \$50.00 from future rent due to the Landlord.

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.

March 25, 2010

Date of Decision
