

## **Decision**

**Dispute Codes:** CNC, FF

### **Introduction**

This hearing dealt with an application by the tenant for cancellation of a notice to end tenancy for cause, in addition to recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony. Despite being served in person on March 9, 2010 with the application for dispute resolution and notice of hearing, the landlord(s) did not appear.

### **Issues to be decided**

- Whether the tenant is entitled to either or both of the above under the Act

### **Background and Evidence**

There is no written tenancy agreement in evidence for this tenancy which began 31 years ago in 1979. Currently, rent in the amount of \$1,040.00 is payable in advance on the first day of each month. A security deposit of \$150.00 was collected at the outset of tenancy.

The tenant testified as to her understanding that the landlord(s) appeared concerned that there may be more than 3 persons living in the unit. She stated that while occupants in the unit are typically limited to her, her husband and one daughter, there was recently a limited period of time during which another daughter visited with her in the unit.

The landlord(s) issued a 1 month notice to end tenancy for cause dated March 6, 2010, which the tenant states was attached to her door. A copy of the notice was submitted in evidence, and the reason shown on the notice for its issuance is as follows:

Tenant has allowed an unreasonable number of occupants in the unit / site

The tenant testified that subsequent to her receipt of the notice, her visiting daughter has returned to her own home, and tenants in the unit are limited to three.

### **Analysis**

Based on the documentary evidence and undisputed testimony of the tenant, I find that the tenant was served with a 1 month notice to end tenancy for cause dated March 6, 2010. The tenant filed an application for dispute resolution to dispute the notice on March 8, 2010, which I find is within the 10 day period available to dispute such a notice pursuant to section 47(4) of the Act.

As the landlord(s) did not attend the hearing and make an oral request for an order of possession, and as there is no application otherwise before me from the landlord(s) requesting an order of possession, the 1 month notice to end tenancy for cause is hereby set aside. There tenancy therefore continues in full force and effect.

As the tenant has succeeded in her application to have the notice set aside, I find that the tenant is entitled to recover the filing fee. In this regard I order that the tenant may withhold \$50.00 from the next regular payment of monthly rent.

### **Conclusion**

Following from all of the above, I hereby cancel the 1 month notice to end tenancy for cause, and the tenancy therefore continues uninterrupted.

I hereby order that the tenant may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee.

DATE: April 22, 2010

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Dispute Resolution Officer