

DECISION

Dispute Codes CNL, OLC, OPC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request to set aside a section 49 Notice to End Tenancy for landlord use. The tenant is also requesting that the landlord bear the \$50.00 cost of the filing fee which she paid for her application for dispute resolution.

The landlord's application is a request for an Order of Possession based on a section 47 Notice to End Tenancy for cause. The landlord is also requesting that the tenant bear the \$50.00 cost of the filing fee which he paid for his application for dispute resolution.

Tenant's application

Background and Evidence

The landlord sent the tenant an e-mail stating that he wanted to end the tenancy so the property would be vacant for selling. This application is a dispute of that Notice to End Tenancy.

The tenant testified that the notice is not in the proper form and therefore she believes it should be invalid.

The landlord admitted that he did not serve a proper Notice to End Tenancy in the form required by the Residential Tenancy Act.

Analysis

The Residential Tenancy Act requires that a Notice to End Tenancy for landlord use be in a prescribed form, and therefore since this one is not in the prescribed form it is invalid and I therefore cancel the Notice to End Tenancy.

It is also my decision that the landlord must bear the \$50.00 filing fee paid by the tenant for her application for dispute resolution.

Landlord's application

Background and Evidence

The landlord served the tenant with the Notice to End Tenancy stating that the rent has been repeatedly late.

The landlord presented evidence that shows that the rent has been late on at least four occasions.

The landlord is therefore requesting an Order of Possession based on the Notice to End Tenancy.

The tenant testified that her rent has been late on two or three occasions, and that she has presently withholding the rent which was due on March the 15th 2010, however she believes the notice has only been given in retaliation for her disputing the landlords e-mail Notice to End Tenancy for landlord use.

The landlord further stated that he did not fully understand his rights and obligations when he gave the Notice to End Tenancy by e-mail and therefore when he received the tenants dispute of his notice, he then became better informed about his rights as a landlord and it was then that he found out that a tenancy can be ended for repeatedly rent payments. The notice was not given in retaliation, it was given at that time because that is when he first became aware of his right to end the tenancy.

Analysis

It is my finding that the landlord has shown that the rent for the dispute property has been late on at least four previous occasions, and since the March 15 rent is still outstanding that now makes five late payments.

Section 47(1)(b) of the Residential Tenancy Act states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Therefore it is my decision that the landlord does have the right to end this tenancy for repeatedly late rent payments even if his previous e-mail Notice to End Tenancy was invalid.

I have therefore issued an Order of Possession to the landlord for 1 p.m. April 15, 2010; however at the hearing the landlord testified that if the tenant pays the full outstanding rent immediately, and also pays \$550.00 rent on April 15, 2010 he will allow the tenant to stay in the rental unit until April 30, 2010. This is an agreement between the parties and will not be reflected in my order.

It is also my decision that the tenant must bear the \$50.00 cost of the filing fee that the landlord paid for his application for dispute resolution.

Conclusion

I have set off fee \$50.00 filing fee that I allowed in the tenants application against the \$50.00 filing fee I allowed in the landlords application, and no monetary order has been issued.

I have issued an Order of Possession to the landlord for 1:00 p.m. April 15, 2010.

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: April 09, 2010.

Dispute Resolution Officer