

DECISION

Dispute Codes CNC

Introduction

This was an application by the tenant seeking an order cancelling a 30 day Notice to End Tenancy for cause dated February 15, 2010. The tenant also applied for more time to make an application to cancel the Notice to End Tenancy. The hearing was conducted by conference call. The tenant participated and the landlord was represented by its property manager.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled? Is the landlord entitled to an order for possession?

Background and Evidence

The tenancy began in 2005. On February 15, 2010 the landlord's representative personally served the tenant with a Notice to End Tenancy for cause. The cause alleged was that the tenant has cause extraordinary damage to the rental unit and that the tenant has breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after she received written notice to do so.

The tenant has caused two fires in the rental unit. In May, 2009 the tenant's stove was damaged by fire. The landlord replaced the stove at no cost to the tenant.

In September, 2009 the tenant caused a second fire that damaged the carpet and vinyl flooring in the rental unit. The landlord replaced the carpet and charged the tenant \$480.00, being 60% of the carpet replacement cost. The landlord also charged the tenant for the cost to repair a clogged toilet when it was ascertained that the clog was caused by the tenant. After the work was done the landlord advised the tenant that she

was responsible for the repair costs. The landlord arranged a payment schedule with the tenant. The tenant did not comply with the schedule and did not pay the repair costs despite repeated letters from the landlord.

According to the tenant when she received the Notice to End Tenancy on February 15, 2010 she spoke to the landlord's property manager who told her that if she paid the repair costs in full the Notice to End Tenancy would be withdrawn.

The landlord's representative denied making any such agreement with the tenant. She provided a copy of her receipt to the tenant for the payment wherein it was noted that the payment was not accepted as reinstating the tenancy. She noted that although the tenant was served with the one month Notice to End Tenancy on February 15, 2010 she failed to dispute the Notice within the time allowed and only filed her application for dispute resolution on March 5, 2010.

The landlord submitted photographs that show that there is extensive damage to the rental unit, apart from fire damage caused by the tenant. The landlord also submitted several written complaints from other occupants about noise and disturbances caused by the tenant.

The tenant applied for more time to apply to cancel the Notice to End Tenancy, but at the hearing she did not give any evidence as to exceptional circumstances that prevented her from applying for dispute resolution within the 10 day period provided by section 47 (4) of the *Residential Tenancy Act*.

Analysis and Conclusion

The evidence established that the tenant was personally served with a one month Notice to End Tenancy for cause on February 15, 2010. I accept the testimony of the landlord's representative that she did not agree to reinstate the tenancy if the tenant made the repair payment in full. The landlord's representative testified that she did not

have authority to make that commitment to the tenant. Upon the evidence presented by the landlord it has been patient with the tenant over the course of this tenancy; that patience was finally exhausted and it issued the Notice to End Tenancy on February 15, 2010. There is no written evidence of such an agreement, but there is a written Notice to End Tenancy and the tenant did not apply to dispute the Notice within the time provided; she did not provide any convincing reason why she failed to apply to cancel the Notice within time and she is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The evidence submitted by the landlord does show that the tenant has caused damage to the rental unit that I regard as extraordinary.

I dismiss the tenant's application without leave to reapply.

The landlord requested that I issue an order for possession in the event that I dismissed the tenant's application. The landlord also requested a monetary order, but I am unable to consider this request because there is no application for a monetary order before me. Based on the above facts I find that the landlord is entitled to an order for possession effective April 30, 2010 after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

Dated: April 20, 2010.
