

DECISION

Dispute Codes AAT, FF, OPT, CNC

Introduction

Some a 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

Although the tenants put other dispute codes on his application, at the hearing he stated that what is requesting is to have a section 47 Notice to End Tenancy cancelled and he is requesting that the landlord bear the \$50.00 cost of the filing fee to be paid for his application for dispute resolution.

Background and Evidence

The landlord testified that:

- The Notice to End Tenancy was given to the tenant because rent from the tenants below this tenant was reduced in a previous arbitration because they were suffering loss of use and enjoyment due to noise from the window in the applicants unit and from coughing and spitting sounds being made by the applicant at the window.
- They have requested that the applicant refrain from opening and closing his window and coughing and spitting out the window, and the applicant has complied with their requests however they felt due to the order issued in favour of the tenants below they had no option but to issue a Notice to End Tenancy to the applicant.
- They did not want to end this tenancy but feel they been forced into it by the previous decision.

The applicant testified that:

- He has complied with the landlords requests to not smoke, and cough and spit out the window, and therefore he does not believe this tenancy should be ended.

Analysis

It is my decision that the landlords do not have grounds to end this tenancy for breach of a material term, because the tenant has complied with their requests and complied within a reasonable time after he receive written notice to do so.

I therefore find in favour of the applicant and this tenancy continues.

Conclusion

The section 47 Notice to End Tenancy dated March 31, 2010 is hereby cancelled. I further order that the respondent landlords bear the \$50.00 cost of the filing fee that the applicant paid for the dispute resolution application. The applicant may therefore make a one-time deduction of \$50.00 from future rent payable to the landlords.

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: June 02, 2010.

Dispute Resolution Officer