

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord on April 28, 2009. The Landlord confirmed receipt of the hearing package.

The Landlord, the Administrative Assistant to the Landlord, and the Male Tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel the notice to end tenancy for cause under section 47 of the *Act*?

### Background and Evidence

The undisputed testimony was the Tenants began their tenancy on approximately February 22, 2005 in unit # 4100 and paid a security deposit of \$392.00 on February 22, 2005. At the Tenants' request they moved into unit # 2040 on July 22, 2009 where their current rent is payable on the first of each month in the amount of approximately \$771.00.

The Landlord testified the Tenant attended a move-out inspection of unit # 4100 July 23, 2009 at which time the move-out report was completed noting the oven, refrigerator and carpets required cleaning. The Landlord argued the Tenant signed the move-out inspection report agreeing that the balance of the security deposit from unit #4100 would be transferred to the tenancy agreement for unit #2040 and the Tenants would be required to pay any remaining balance after the cleaning was performed. After the cleaning was performed and the security deposit was transferred to unit # 2040 there was an outstanding balance for the security deposit of \$9.62. The Landlord testified that there were several invoices issued to the Tenants and finally the 1 Month Notice to End Tenancy was issued with a copy of the final invoice.

The Landlord advised the Tenant refuses to pay the balance owing on the security deposit of \$9.62 and he continues to cause the Landlord and their staff frustration. The Landlord stated this is the third time the Tenant has filed a claim for dispute resolution and the first two were the Tenant's attempt to get double his security deposit returned for unit # 4100 even though the Tenant signed over the deposit to unit # 2040. The Landlord argued the Tenant has accused the staff of forging his signature on the move-out and move-in forms, accused them of fraud, said they were lying, and it has gotten to the point where the staff cannot conduct normal business dealings with the Tenant. The Landlord stated that after the Tenants occupied unit # 2040 they complained about the carpet smelling so the Landlord replaced the carpet and have attempted to accommodate the Tenants' requests.

The Tenant argued that he did not attend a move-in inspection of unit # 2040 and that he did not sign a move-out form for unit # 4100. At first the Tenant testified the fridge and stove were not dirty because he had cleaned them and later in his testimony the Tenant stated that the Landlord pointed out the fridge and stove were dirty so he went back and cleaned them. Then the Tenant argued that the Landlord did not pay to have the fridge and stove cleaned because the staff told him they did not clean them. The Tenant confirmed that he did not submit evidence to support his statement that the

fridge and stove were not cleaned by the Landlord's staff. The Tenant argued that he never received invoices for the amount owing on the security deposit.

The Administrative Assistant signed into the hearing and confirmed she posted the 1 Month Notice to End Tenancy to the Tenants' door on April 20, 2010 and that the issue date on the notice was a typing error which should show April 20, 2010 and not April 20, 2008. The Administrative Assistant provided testimony confirming the Tenants were issued invoices for the amount due on the security deposit both via the mail December 4, 2009, February 22, 2010, and the April 20, 2010 invoice was posted to their door with the Notice to End Tenancy.

The Landlord testified they are seeking an Order of Possession effective June 30, 2010 because not only has the Tenant refused to pay the balance owing on the security deposit he has made false accusations against the staff since last July, has accused the Landlord of refusing to return the security deposit, and has started two previous proceedings against the Landlord with no merit which continues to cause the Landlord continued frustration and interference to the Landlord's business.

Both parties made reference to the move-out inspection report for unit # 4100 and the move-in inspection report for unit # 2040 as well as previous invoices and letters issued between the parties. Both parties confirmed they had copies of the above mentioned documents and they both had access to a fax machine. I provided each party an opportunity to fax additional evidence to the Residential Tenancy Branch no later than the close of business June 14, 2010.

### Analysis

All of the testimony and documentary evidence was carefully considered.

Thirty three pages of additional evidence were received from the Landlord via fax on June 14, 2010 at 4:00 p.m. A copy of evidence is attached to my decision to ensure the

principals of natural justice are upheld. There was no additional evidence received from the Tenant.

After careful review of the evidence I find the Tenants have a balance owing on the security deposit for unit # 2040 and that the Tenants have refused to pay the amount due. Section 49 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not pay the full security deposit within 30 days of the date the deposit is required to be paid under the tenancy agreement.

Upon review of the 1 Month Notice to End Tenancy, I accept the testimony that a clerical error was made on the year of issuance of the Notice, that the issue date was April 20, 2010, and I find the Notice to be completed in accordance with the requirements of the Act. I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice therefore I dismiss the Tenant's application to dispute the 1 Month Notice to End Tenancy.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Based on the aforementioned I hereby grant the Landlord an Order of Possession effective June 30, 2010.

### Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **June 30, 2010 at 1:00 p.m. after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 15, 2010.

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Dispute Resolution Officer