

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

At the outset of the hearing I asked the applicant tenant to provide details on what "other" issue she had applied for. She indicated that she just wanted to cancel the notice to end tenancy and wanted to make sure everything was covered. As the application had already indicated she was applying to cancel the notice to end the tenancy, I have amended the tenant's application to exclude "other".

Near the end of the hearing, the landlord's agent requested an order of possession should the tenant be unsuccessful in her application to cancel the notice.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on February 15, 2008 as a 1 year fixed term tenancy that converted to a month to month tenancy on February 28, 2009 for a current monthly rent of \$1,025.00 due on the 1st of the month, a security deposit of \$512.50 was paid in February 2008.

The tenant submitted the following documents into evidence:

- A copy of a 1 Month Notice to End Tenancy for Cause dated May 19, 2010 with an effective date of June 30, 2010 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; and the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Copies of summaries of the issues from the tenant's perspective; and

- Copies of correspondence between the tenant and the building manager/agent.

The landlord has submitted into evidence:

- A summary of events;
- Copies of correspondence from the landlord to the tenant;
- A copy of hand written notes regarding the tenant; and
- Copies of several letters of complaint from tenants in the residential property.

The landlord testified that the tenant did not, to the best of his knowledge, engage in an illegal activity in relation to the tenant adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant or landlord.

The landlord also testified that although there had been issues regarding a broken window a couple of years ago there was nothing the tenant had done recently that had put the landlord's property at significant risk.

The landlord testified that he has received many complaints from tenants regarding this tenant's behaviour and disturbances that include yelling and use of obscenities during the late night and early morning and when confronting other tenants in the building.

The landlord went on to say that a few months after he took over as building manager, he had met with the tenant regarding complaints at that time and as a result he issued a letter dated February 20, 2009 providing a warning that should her behaviour continue he would issue an eviction notice.

The landlord testified that the disturbances quieten down for a period of time after that. But he again started receiving complaints and despite his attempts trying to communicate with the tenant she would not communicate with him. The tenant acknowledged in the hearing she was not comfortable dealing with the landlord.

The tenant testified that she did not bother the other tenants and that the only interaction she ever had with tenants was only to say hello. She stated that she just wanted to be left alone. The tenant noted that she is so conscientious about disturbing other tenants that she always uses her "ear buds" when listening to music or watching movies.

The tenant went on to state that as she is a writer she did from time to time act out scenes from her writing. She described these scenes as being arguments between two people, that because she wasn't writing children's stories the characters used profanity, and that the arguments would get to the point of yelling.

Analysis

As noted in the hearing in response to the landlord's testimony that the tenant was not engaged in an illegal activity and that there has been no activity on the tenant's behalf

that has put the landlord's property at risk, I find the landlord has not justified those reasons for cause to end the tenancy.

As to the disturbances the landlord has received complaints about, I accept the tenant's testimony that when she acts out her scenes that the arguments contain yelling and use of profanity can become loud. Based on the complaints submitted I further find that the other tenants in the residential property are being unreasonably disturbed as a result.

I also accept the landlord has attempted on several occasions to discuss issues with the tenant but that the tenant has been either non-communicative or non-cooperative. I therefore find the landlord has sufficiently justified there is cause to end the tenancy in compliance with Section 47 of the *Act*.

Conclusion

Based on my findings above, I dismiss the tenant's application in its entirety, without leave to reapply.

In accordance with Section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant 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: July 09, 2010.

Dispute Resolution Officer