

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done by leaving a copy of the documents in the Landlord's office mailbox. The Landlord confirmed receipt of the hearing document.

The Landlord, the Tenant, and the Tenant's Agent 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 under section 47 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on approximately December 30, 1994 with the previous owners and continues with the new owners. The Tenant paid a security deposit of \$340.00 on or before December 30, 1994.

These parties attended dispute resolution on April 26, 2010, during which the Dispute Resolution Officer made a finding that the Tenant was late paying rent on October 2, 2009 and December 3, 2009. The previous Notice to End Tenancy which was issued on March 4, 2010, was cancelled in the April 26, 2010 hearing and both parties were

advised of the procedure to pay rent and what would constitute late payment from the hearing date of April 26, 2010 onward.

The Landlord argued that he did not provide evidence of a late payment which occurred in January 2010, for the previous hearing, therefore he felt it was sufficient proof of late payment to issue another 1 Month Notice to End Tenancy. Another notice was sent to the Tenant on May 21, 2010, via registered mail. The Landlord confirmed that all rent payments since January 2010, have been paid on time and in the manner discussed in the previous hearing.

The Tenant testified and confirmed he provided evidence of his receipt of the May 2010 1 Month Notice to End Tenancy and argued that he has not paid his rent late since attending the previous hearing.

Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence supports that the Tenant's rent has been paid on time and in the manner required since February 1, 2010. The parties attended a hearing in April 2010 for which the Landlord failed to provide evidence of a late payment which allegedly occurred in January, 2010. The Landlord then waited 25 days after attending the April 26, 2010 hearing before mailing another notice to end tenancy arguing that the third late payment occurred back in January, 2010, and that he failed to provide proof of this at the previous hearing. Based on the aforementioned I find the Landlord failed to do what was reasonable to mitigate the problem, in contravention of section 7 of the Act.

Upon review of the Notice to End Tenancy, I find the Notice not to be completed in accordance with the requirements of the Act. Upon consideration of all the evidence presented to me, I find the Landlord has failed to prove the causes for issuing the 1 Month Notice to End Tenancy dated May 7, 2010, and the Notice is hereby cancelled.

The Tenant has been successful with his application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated May 7, 2010, is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct the one time amount of \$50.00 from his August 1, 2010 rent payment as recovery of the filing fee.

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 12, 2010.

Dispute Resolution Officer