

DECISION

Dispute Codes:

CNC

Introduction

This hearing was held in response to the tenant's Application to cancel a Notice ending this tenancy for Cause and for filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The only evidence before me was a copy of the 1 Mont Notice for cause issued on May 25, 2010. The parties presented affirmed oral testimony evidence and to made submissions during the hearing.

Issue(s) to be Decided

Should the Notice ending the tenancy for cause issued on May 25, 2010, be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced approximately 2 years ago. Rent is \$550.00 per month, due on the 15th day of each month.

On May 25, 2010, the landlord personally served the tenant with the Notice ending the tenancy for cause effective June 25, 2010. Within 10 days the tenant submitted his Application disputing the Notice.

The reasons stated for the Notice to End Tenancy were that the tenant has been repeatedly late paying his rent and that the tenant has put the landlord's property at significant risk.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- That rent has been paid late, with payments made on June 16, May 18, April 18 and March 19, 2010;

- That the tenant has auto parts on his floor, that he keeps his windows open when the heat is on, and that the tenant has disabled the smoke alarm;
- That the tenant did not allow the landlord to enter the rental unit to inspect the unit;
- That this is an illegal suite;
- That once the tenant is gone he wishes to use the unit as his son's playroom.

The landlord testified that he wants the tenant out of the rental unit.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That he always pays his rent by midnight on the 15th of each month, by placing the cheque under the door between his suite and the landlord's unit, as requested by the landlord;
- That the landlord cashes the rent cheques several days after payment is given and sometimes the landlord does not cash the cheques quickly;
- That he did disconnect the smoke alarm on one occasion and forgot to reinstall the battery;
- That he does have auto parts in his rental unit.

The tenant alleged that the landlord recently tried to remove his stove and that the called the police as he discovered that the City did not wish to inspect the stove, as declared by the landlord. The tenant stated the landlord brings additional people into his unit when he completes inspections.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has been repeatedly late paying rent or placed the landlord's property at significant risk. The burden of proving the basis upon which the Notice was issued falls to the landlord.

In determining whether this tenancy should end, I gave extensive consideration to the conflicting testimony in relation to when rent has been paid. In the absence of any evidence that payments have been made late and, as a result of the disputed testimony, I find that the landlord has not proven repeated late payments and that the tenancy cannot end on this basis.

In relation to placing the landlord's property at risk, the tenant has acknowledged disabling the smoke alarm on one occasion. The tenant has now been warned that he must not disable the alarm and that if it is malfunctioning he must give the landlord notice requesting it be repaired.

During the hearing I suggested that the tenant and landlord arrange rent payments by way of post-dated cheques, so that there can be no further allegation of late payment. Any cheques not used when the tenancy ends must be returned to the tenant.

I reviewed section 29 of the Act, which provides the landlord with restricted access to the rental unit. I also discussed the tenant's right to quiet enjoyment and essential services. I find the landlord's assertion that he wants the tenant to leave suggests that the landlord has not issued this Notice in good faith, as during this hearing he testified he wished to have the unit for his own use as a playroom.

Conclusion

As I have determined that the landlord's have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act, I hereby set aside the One Month Notice to End Tenancy, dated May 25, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

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