

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for cause, for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on May 28, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the Act?

### Background and Evidence

Both Parties agree that this tenancy started on August 01, 2009 and ended on June 17, 2010. Rent for this unit was \$750.00 per month. The tenant paid a security deposit of \$375.00 on July 27, 2009.

The tenant testifies that the landlord served him with a Two Month Notice in April, 2010 to end the tenancy on June 30, 2010. The tenant stated that he told the landlord that the end of June would be a difficult time for him to move and he states that the landlord agreed to take back that Notice and issued another Two Month Notice which was given to the tenant by the landlords spouse on or about May 08, 2009 to end the tenancy on July 31, 2010. The tenant claims that on May 12, 2010 the landlord withdrew this Two Month Notice and asked the tenant to return it to him.

On May 12, 2010 the tenant claims he returned the Two Month Notice to the landlord and on the same day the landlord served him with a One Month Notice to End Tenancy for cause. The tenant claims the reasons given on the One Month Notice were untrue and the tenant filed his application to dispute the Notice on May 25, 2010. This was amended on May 28, 2010. The tenant states on June 17, 2010 he moved from the rental unit as the landlord/tenant relationship had broken down.

The tenant seeks an Order for the landlord to comply with the Act to pay him compensation equivalent to one months' rent in compensation for the original Two Month Notice to End Tenancy.

The landlord disputes the tenants' claims. The landlord testifies that he did not give the tenant a Two Month Notice to End Tenancy and his wife would have had no authority to give a tenant a Notice as she was not a landlord at the property. The landlord claims as no Two Month Notice was given to the tenant the remainder of the tenants allegations are untrue with regard to the landlord asking for the Notice back. The landlord states a One Month Notice was served on the tenant on May 12, 2010 for cause as the tenant constantly disturbed the landlords' family with loud music and films and was

incorporative and obstructive with the gas repair man who came to repair the fire place in the tenants unit.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. The tenant has applied to cancel the One Month Notice to End Tenancy for Cause. As the tenant has since vacated the rental unit then I cannot cancel a Notice to End Tenancy as the tenancy has already ended. In any event page two of the Notice stated that the tenant had 10 days to file an application to cancel the Notice. The tenant confirms he received the Notice on May 12, 2010. The tenant had 10 days to apply to cancel the Notice but did not file his application until May 25, 2010 three days after the allowable time had expired pursuant to s.47 (4); therefore even if the tenant had not moved from the rental unit he did not make his application to cancel the Notice in time and the Notice would have remained in force and effect.

With regard to the tenants application for an Order for the landlord to comply with the Act; at this time the tenant has provided no evidence to support his claim that a Two Month Notice was issued to him. In this instance the burden of proof falls on the claimant to provide evidence of another Notice being in effect. As I have not received any evidence to satisfy me that a Two Month Notice was served on the tenant there is no basis for me to issue an Order for the landlord to comply with the Act.

As the tenant has been unsuccessful with his claim I find he must bear the cost of filing his own application.

### Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply.

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 20, 2010.

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Dispute Resolution Officer