



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on February 21 an altercation took place between the tenant and another resident in the complex. The landlord testified that she was told by the police that the fight was consensual and was told by the other resident that the tenant had started the fight. The landlord claimed that the tenant violated the terms of a crime-free housing addendum to her tenancy agreement which prohibits her from engaging in any criminal activity including assault or threatened assault.

The tenant claimed that she was lured to the other resident's unit and that upon arriving at the unit, the resident attacked her. The parties agreed that the police file on the matter had been closed and that no criminal charges had been laid against either party. On May 21 the landlord sent via registered mail a notice to end tenancy for cause which alleges that the tenant had engaged in illegal activity which adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

Analysis

In order to establish grounds to end the tenancy the landlord must prove that the tenant engaged in criminal activity. In this case, no criminal charges were brought against the tenant and there is no suggestion that the law was violated in any other way. The crime-free housing addendum specifically references criminal activity, so in order for the tenant to have been found to have contravened that addendum, criminal activity must be proven. I find that the landlord has failed to meet the burden of proving that the tenant engaged in illegal activity and accordingly I order that the notice to end tenancy be set aside and of no force or effect. I find that the tenant is entitled to recover the \$50.00 filing fee paid to bring this application. The tenant may deduct this sum from future rent owed to the landlord.

Conclusion

The notice to end tenancy is set aside. As a result, the tenancy will continue. The tenant may deduct \$50.00 from future rent to recover the filing fee paid to bring this application.

Dated: July 21, 2010

Dispute Resolution Officer