

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a notice to end tenancy for cause.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 8, 2010. Mail receipt numbers were provided in the Tenants' evidence. The Landlord is deemed to be served the hearing documents on July 13, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act*?

### Background and Evidence

The parties entered into a verbal month to month tenancy effective February 1, 2005. Rent is payable on the first of each month in the amount of \$650.00. A security deposit of \$250.00 was paid on or before February 1, 2005. The rental unit is located on the main floor with a separate rental suite located on the upper level of the house.

The Tenants advised that the last 5 ½ years the Landlord attends the rental unit on the first of each month to pick up rent. If the first of the month falls on the weekend then the Landlord comes by on the first business day after the weekend. They have previously paid rent by cash and only recently began to request receipts for their rent payments.

The Tenants stated that on June 1, 2010, the Landlord offered the Tenants to rent the entire house (both suites) at a cost of \$1,600.00. The Tenants refused this offer. When the Tenants returned home on June 12, 2010, they found two people sitting on their porch. The Tenants asked these two people if they were going to be the new tenants for the upper suite and they said no they were moving into the Tenants' suite on the

main floor. These people are now occupying the upper suite with numerous other people coming and going and with one person living in a van on the property.

When the Landlord attended the rental unit on July 2, 2010 to pick up the rent he served the female Tenant with the 1 Month Notice to end tenancy for cause. At that time the Landlord told the Tenants that he was going to sell the house and needed to do renovations. The Landlords reasons were very unclear.

On August 1, 2010 a female, who the Tenants had never seen before, came to pick up the rent. When she knocked on their doors she was surprised to see these Tenants and asked them what they were still doing in the rental unit at which point they told the women they were going to arbitration. The woman was insistent on collecting the rent, on behalf of the Landlord so the Tenants paid her the \$650.00 cash and requested a receipt. The woman stated she did not have a receipt book so the Tenants had her complete a receipt that they had and she wrote that she was collecting rent on behalf of the Landlord.

The Tenants confirmed that they feel the Landlord is attempting to evict them so he can charge "substantially higher rent".

### Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being served with notice of this proceeding in accordance with the Act, I accept the version of events as discussed by the Tenants.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue. In these circumstances the Landlord issued the 1 Month Notice to End Tenancy with an effective date of July 31, 2010 and then accepted rent of \$650.00 on August 1, 2010 for the month of August

2010. Based on the aforementioned the Landlord has waived the Notice and reinstated the tenancy.

The Landlord did not attend the hearing and did not submit evidence to support the issuance of the 1 Month Notice to End Tenancy.

For the above mentioned reasons, I find the 1 Month Notice to End Tenancy to be void and I hereby approve the Tenant's request to cancel the Notice.

### Conclusion

The 1 Month Notice to End Tenancy issued July 2, 2010, is HEREBY CANCELLED and is of no force or effect.

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: August 27, 2010.

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Dispute Resolution Officer