



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to cancel a 1 Month Notice to End Tenancy issued for cause.

Service of the hearing documents, by the Tenants to the Landlord, was done via personal service to the Agent on approximately November 12, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

Issues(s) to be Decided

1. Have the Tenants filed their application within the required timeframes set out in the *Residential Tenancy Act*?
2. Is so, has the Landlord proven there was cause to end this tenancy?
3. If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

I heard undisputed testimony that the tenancy agreement became effective July 3, 2009. Rent is payable on the first of each month in the amount of \$600.00 and a security deposit of \$300.00 was paid July 3, 2009.

The Landlord and Agent testified that they have been working with these Tenants in attempts to have them move. They are dealing with loud noises, fighting and arguing until all hours of the night and early morning, rent has been paid late a few times, and the male Tenant continues to alter or move the security cameras with his cane even after the Landlord has verbally warned him on two separate occasions to stop. The 1 Month Notice to End Tenancy was issued and personally served to the female Tenant on November 1, 2010 by the Agent. Since issuing the Notice he had to call the Police on November 24, 2010 because they were fighting and arguing and disturbing the neighbours again.

The Landlord stated "we need to get them moved" and advised they are seeking a resolution to have these Tenants move out. He is requesting an Order of Possession for as soon as possible because this has been going on for several months now.

The female Tenant testified she was not served with the 1 Month Notice. She could not explain how she received the Notice and thought that maybe it was slid under the door.

The Agent denied ever sliding anything under the door and argued that he always personally serves the Notices.

The male Tenant testified and confirmed that he saw the 1 Month Notice to End Tenancy November 1, 2010 when he returned home. He advised that they had a dispute resolution hearing about a month ago to deal with the other Notice that was issued and it was determined at that time that the Landlord did not have enough evidence to support the Notice. He stated there were no problems when the Police arrived November 24, 2010, that there were no weapons present, and no one was arrested at that time. He confirmed that he and his spouse can be loud and he usually leaves before things get too loud. He wanted to advise that the rental unit has not been well maintained and that there are mice in the building. He wants to move however he has not been able to find a place as of yet.

Analysis

The evidence supports the Tenants received the 1 Month Notice to End Tenancy November 1, 2010. Section 47(4) of the Act provides that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Therefore, in this case the Tenants were required to make their application no later than November 11, 2010; however they filed their application for dispute resolution on November 12, 2010. Therefore the application for dispute resolution was not received within the required timeframes and I hereby dismiss the Tenants' application to cancel the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective December 31, 2010 at 1:00 p.m. after service on the Tenants. This Order must be served on the Tenants and maybe filed in Supreme Court and enforced as an Order of that Court.

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: December 06, 2010.

Dispute Resolution Officer