



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a 1 Month Notice to End Tenancy for Cause.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal deliver on December 23, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and Tenant in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy for Cause?

Background and Evidence

This tenancy started on September 1, 2009 as a 1 year fixed term tenancy and renewed as a month to month tenancy. Rent is \$1,310.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$650.00 on September 1, 2009. The Landlord said the Tenant has unpaid rent of \$1,310.00 for January, 2011. The Tenant said there was a hold up of his disability pension because of his annual review. He said he should be going to the pension office after this hearing and should have the rent payment soon after that meeting.

The Landlord said they issued a 1 Month Notice to End Tenancy for Cause as they had complaints from other tenants and they had 10 police report file numbers of incidence at the Tenant's rental unit. The Landlord said the Police did not release the reports to him, but he did have the police report file numbers. As well the Landlord said he did not have any witnesses or written complaints about the Tenant that he could provide as evidence.

The Tenant said that the disturbances have been caused by another occupant of the unit who is now moved out and there is a restraining order against him returning to the rental unit. The Tenant said this other occupant was the source of the police incidents and now that he is gone there should not be any more incidents. The Tenant continued

to say that he does not have any criminal charges against him and he does not do drugs or deal drugs from the rental unit. He said he gets along with the other tenants and he submitted a written letter from a previous tenant saying the problem was with the other occupant not the Tenant.

The Landlord said he did not submit any evidence as he did not realize he needed to and as such he said he may issue another Notice to End Tenancy with evidence if the Tenant's application to cancel this notice is successful. The Landlord continued to say he understands the other occupant may have been the source of the issues, but he does not want to deal with police incidents at his rental units. He said he hopes the Tenant's new living situation will stop the police incidents.

The Tenant said he will pay the January rent as soon as he gets his pension check and he said the problems at his rental unit are over now that he is in the unit by himself again.

Analysis

There was contradictory evidence give by both the Landlord and the Tenant. The Landlord said they have police report file numbers with regard to the rental unit, but the Landlord did not have the reports and did not have any witnesses or written evidence to support the claims on the Notice to End Tenancy for Cause dated December 15, 2010.

The burden of proving a claim lies with the party issuing the Notice to End Tenancy and when it is just the Landlords' word against the Tenants' word the burden of proof is not met. There must be substantial evidence to establish grounds to evict Tenants for Cause. The testimony regarding the police report file numbers did not establish that the Tenant was responsible for the incidents or what the incidents were; I find the Landlord has not proven grounds to warrant a Notice to End the Tenancy for Cause.

I find for the Tenant and grant his application to Cancel the 1 Month Notice to End Tenancy for Cause dated December 15, 2010.

Conclusion

I find for the Tenant and I order the Notice to End Tenancy dated December 15, 2010 to be cancelled and the tenancy will continue as is.

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: January 18, 2011.

Residential Tenancy Branch