

DECISION

Dispute Codes CNC, MNDC

Introduction

This application was originally scheduled for January 24, 2011 and was subsequently adjourned from an application by the Landlord as the Property Manager was unavailable due to a specialist appointment at the hospital. The Tenant had no objection and the application was granted.

The Landlord on this hearing date has applied for an adjournment as she states that is currently in the hospital and cannot proceed. The Landlord has not made any effort to file any evidence or re-schedule this hearing prior to today's date. I find that the Landlord is fit to proceed with the hearing as she has not displayed or commented on any issues that would prevent her from proceeding. The adjournment application is denied.

This is an application by the Tenant to cancel a notice to end tenancy for cause and the request for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Tenant entitled to cancel the notice to end tenancy for cause?

Is the Tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The Tenant has provided a copy of a 1 month notice to end tenancy for cause. The notice displays the cause as, the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property. The Tenant states that this was received on December 31, 2010 and not December 31, 2008 as displayed on the notice. The notice shows a move-out date of January 31, 2011. The Landlord states that the notice was marked incorrectly and stated during direct evidence that the notice was only for damage to the Landlord's property and is not aware of any illegal activity. The Tenant

states that they were unaware of this and that he filed an application for dispute regarding the notice as it was stated.

The Landlord states that the Tenant has caused damage to the rental unit, but has not provided any supporting evidence. The Landlord on direct evidence stated that there is urine stains and smells in the rental unit probably caused by the Tenant's cat. The Tenant has stated that he has not engaged in any illegal activity nor has there been any damage to the rental unit. The Tenant has provided a witness to support his dispute that there are no urine smells or damage to the rental unit.

The Tenant states that he is seeking compensation for loss of quiet enjoyment in the form of a monetary order of \$1,600.00. The Tenant states he is entitled to this as he has responded to 4 eviction notices over a 2 year period. He has responded to each where every notice was set aside for lack of merit. The Tenant states that he should be compensated for \$400.00 (equal to 1 months rent) for each incident. The Landlord states that the application for dispute resolution process is how matters are resolved and should not be penalized for this.

Analysis

The Landlord has issued a Notice to End Tenancy for Cause under section 47 (1) of the Residential Tenancy Act stating that:

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) Has caused or is likely to cause damage to the Landlord's property,

I find that the Landlord has not provided sufficient evidence to support any illegal activity in the rental unit. The Landlord's own direct evidence is that she is not aware of any illegal activity at the rental unit by the Tenant. The direct evidence of both parties is contradictory. The Landlord states that the rental unit has become damaged due to urine caused by the cats. The Tenant states that there are urine stains or damage to the unit. The burden is on the Landlord to prove their claim. I find that the Landlord has failed in this matter. The Tenant's application to cancel a notice to end tenancy is granted.

The Tenant has provided copies of 3 previous applications for dispute resolution between the two parties. In each case the Tenant Applicant has been successful in their applications. Based upon the evidence provided by the Tenant, I find that the

Landlord has not breached the Tenant's right to quiet enjoyment. One application dealt with the notice of a rent increase, the second for a two month notice to end the tenancy for landlord's use and the third for a notice to end the tenancy for cause. These three applications occurred over a two year period as per the Tenant. I am not satisfied that these events constituted a loss of quiet enjoyment and as such dismiss the Tenant's application.

Conclusion

The notice to cancel a tenancy for cause is set aside.
The Tenant's application for a monetary order for loss of quiet enjoyment is dismissed.

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: February 10, 2011.

Residential Tenancy Branch