



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

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

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

At the beginning of the hearing the Landlord's submission that the Tenant has filed a notice of claim concerning this issue was addressed. The Tenant's have filed for dispute resolution in two separate institutions over the same claim. I find that the Residential Tenancy Branch has jurisdiction over this issue, but find that I will not hear the dispute over the monetary claim until the Tenants have decided which venue they wish to follow. The Tenants counsel has indicated that his clients wish to proceed in the Small Claims Division of the Provincial Court. As such, I dismiss this portion of the application with leave to re-apply until such time that proof that the notice of claim has been withdrawn by the Tenants in the provincial court. The hearing shall continue on the Tenant's application to cancel a notice to end tenancy for cause. The Landlord has indicated that he wishes an order of possession in the event that the notice to end tenancy is confirmed.

Issue(s) to be Decided

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

Background and Evidence

Both parties have attended the conference call hearing and have referred to each other's evidence packages.

Based upon the submitted signed tenancy agreement by both parties, this tenancy began on November 1, 2001 and continues on a month to month basis. A security deposit of \$687.50 was paid on October 3, 2001.

The Landlord claims that the Tenants significantly interfered with or unreasonably disturbed another occupant or the Landlord, that the Tenant has engaged in illegal activity that has , or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord and jeopardized a lawful right or interest of another occupant or the Landlord. The Landlord has supplied a copy of a notice from the Tenants distributed to other Tenants in the building to contact the owner directly "if you can't get E.C. to help you or if you wish to complain about how our block is being looked after...". The Tenant has confirmed this in their direct evidence as well as through the submitted evidence. The Landlord, S.G. has stated that this was her personal number that was distributed and not her business that looks after the property. The Landlord has also provided an affidavit from the resident caretaker stating that several Tenants have voiced concern over the notice that was circulated by the Tenants. The Landlord has also submitted a petition that was signed by the Tenant to the other occupants of the rental to "get rid of E.C. at Gateway." The Tenant's counsel has stated that all of these things are not illegal under the RTA and as such the Landlord has failed to prove cause. The Tenant's counsel has stated that the Landlord has no right under section 28 of the RTA, the right to quiet enjoyment.

Analysis

As both parties have attended the conference call hearing and have referred to each other's evidence packages and have not disputed them, I am satisfied that both have been properly served with the notice of hearing and evidence packages.

Based upon the submitted evidence and direct testimony of both parties, I find that the Landlord has not proven cause. There is no evidence provided to prove that the Landlord was significantly interfered with or unreasonably disturbed by the Tenants. There is an obvious inconvenience initiated by the Tenants in circulating the owners personal information via the notice to all of the other Tenants. I also find that the Landlord has failed to prove that the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord or jeopardized a lawful right or interest of another occupant or the Landlord. Although an inconvenience, this isolated incident could be rectified by a notice to the Tenants of the building by the Landlord's agents in establishing how issues can be properly resolved.

I grant the Tenant's application to cancel the notice to end the tenancy for cause. As the Tenant's have been partially successful in their application, I grant an order under section 67 of \$50.00 for the recovery of the filing fee.

Conclusion

The Tenant's application to cancel a notice to end tenancy is granted.
The Tenant's are granted a monetary order for \$50.00.

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: April 18, 2011.

Residential Tenancy Branch