



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, CNC, FF

Introduction

This hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice for Cause); to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice for Unpaid Rent); and to recover the cost of the filing fee from the Landlords.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she served each of the Landlords separately with a copy of the Notice of Hearing documents, together with her documentary evidence by mailing the documents, via registered mail, on April 14, 2011. The Tenant provided copies of the registered mail receipts and tracking numbers in evidence. It is important to note that the Landlords also provided documentary evidence to the file.

I am satisfied that the Tenant served the Landlords with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Despite being served with the documents, none of the Landlords signed into the teleconference and the Hearing continued in their absence.

Issue to be Decided

Should the Notice for Cause and the Notice for Unpaid rent, both issued April 7, 2011, be cancelled?

Background and Evidence

The Notice for Unpaid Rent indicates that the Tenant owes **rent** that was due on April 1, 2011, in the amount of \$400.00. The Tenant testified that she paid all of her rent for April when it was due and that the \$400.00 the Landlords are seeking are actually for fines levied against the owner of the rental unit by the Strata Corporation for noise violations.

The Notice for Cause alleges the following reasons for ending the tenancy:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Tenant testified that she has been late paying rent twice over the term of the tenancy. She stated that rent is due on the first day of each month. She paid February's rent on February 3, 2011, and paid March's rent in two installments.

The Tenant testified that she is disputing that she is responsible for the noise that the Strata Corporation and her Landlords are alleging. She stated that her neighbours are very noisy and that she believes that they are causing the noise violations. The Tenant also stated that the Landlord alleges 7 incidents, but she has only been made aware of 5 and that she denies all of them.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

The Landlords did not sign into the Hearing. I find that the Landlords have not provided sufficient evidence that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlords; or that she is repeatedly late paying rent.

The Residential Tenancy Policy Guidelines provide that 3 times are sufficient for establishing “repeatedly late” payment of rent. The Tenant testified that she has been late twice, which does not meet the required number of times as set out in the Guidelines. The Tenant is cautioned that she must pay rent when it is due.

The Tenant testified that she paid rent for the month of April and that the \$400.00 referred to in the Notice for Unpaid Rent refers to Strata fines. She testified that she is disputing the fines because she has not made any loud noises to warrant them. I accept the Tenant’s undisputed testimony and find that the Tenant does not owe any **rent** for the month of April, 2011.

For the reasons stated above, I grant the Tenant’s application to cancel both of the Notices to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in her application and is entitled to recover the filing fee from the Landlords. The Tenant may deduct \$50.00 from a subsequent month’s rent in satisfaction of this award and the Landlords must consider the rent paid in full.

Conclusion

The two Notices to End Tenancy issued April 7, 2011, are cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$50.00 from future rent due to the Landlords.

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: May 09, 2011.

Residential Tenancy Branch