



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL OPC FF
 CNC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for Landlord's use of the property, an Order of Possession for Cause, and to recover the cost of the filing fee from the Tenants for his application.

The Tenants filed seeking an Order to cancel the notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for their application.

The parties appeared at the teleconference hearing, gave affirmed testimony, confirmed receipt of hearing documents and evidence provided by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have valid notices to end tenancy been issued and served to the Tenants in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to end the tenancy for cause pursuant to section 47 of the *Residential Tenancy Act*?
3. If so, has the Landlord met the burden of proof to end the tenancy for landlord's use of the property pursuant to section 49 of the *Residential Tenancy Act*?
4. If not, have the Tenants been successful in disputing the Notice to End Tenancy for Cause?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began August 1, 2004 which switched to a month to month tenancy after July 31, 2005. The male Tenant was added to the tenancy agreement as a joint tenant on August 15, 2006. Rent is payable

on the first of each month for the current amount of \$1,175.00 (\$1,250.00 - \$75.00) and the Tenant paid \$625.00 on July 17, 2004 as the security deposit.

At the outset of the hearing the Tenant confirmed they had made application to cancel the 1 Month Notice to End Tenancy for cause issued July 16, 2011. They had not made application to cancel the 2 Month Notice to End Tenancy for Landlord's use of property because they are moving out based on this Notice because they "feel the Landlord has the right to end their tenancy for that reason" and they would be entitled to receive the one month's compensation.

The Landlord advised that he did not wish to proceed today on the 1 Month Notice to End Tenancy as long as he was ensured the tenancy would end based on the 2 Month Notice.

I informed the parties that an Order of Possession would be granted to the Landlord based on the 2 Month Notice because the Landlord had made application for an Order of Possession on both the 1 Month and the 2 Month Notices.

Both parties confirmed they were in agreement to proceed with ending the tenancy based on the 2 Month Notice to End Tenancy that was served personally to the male Tenant by a third party on July 16, 2011.

Analysis

Section 49 (9) of the Act provides that If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

In this case the evidence supports the Tenants were not disputing the 2 Month Notice to end tenancy and the parties agreed to end the tenancy in accordance with this notice.

Based on the aforementioned I hereby grant the Landlord an Order of Possession effective **September 30, 2011**.

As the parties agreed to end this tenancy based on the 2 Month Notice, each of them will have to bear the cost of their own application.

Conclusion

The 1 Month Notice to End Tenancy for cause issued July 16, 2011 is HEREBY CANCELLED and is of no force or effect.

The Landlord's decision will be accompanied by an Order of Possession effective **September 30, 2011 at 1:00 p.m.** This Order is legally binding and must be served upon the respondent Tenants.

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: August 25, 2011.

Residential Tenancy Branch