



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Notice to End Tenancy for Cause (the “Notice”) lists the following cause:

- Rental unit/site must be vacated to comply with a government order.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice valid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on October 1, 2009. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$437.50. On August 1, 2011, the Landlords served the Tenant with the Notice. The Landlord submitted a letter from the town building inspector as evidence that the unit must be vacated. This letter states that the Landlords are to “provide unrestricted interior access between the two levels of the dwelling and the electrical for the second cooking appliance be decommissioned. The breaker must be removed from the electrical panel and the stove

plug receptacle removed and a cover plate installed.” The Landlords argue that since the tenancy agreement with the Tenant is for only the one part of the building and since the town has ordered access between the Tenant’s unit and the remainder of the building, then the tenancy agreement is no longer valid between the Parties. The Tenant states that the door separating the Tenant’s unit from the remainder of the building remains locked and that the Landlords are not in compliance with the town order. The Tenant further states that the Tenant has not asked for any internal access to be made available to the Tenant.

Analysis

Section 44 of the Act provides how a tenancy may be ended. Sections 47, 48 and 49 of the Act further provide how a Landlord may end a tenancy. Where a Notice to End Tenancy under Section 47 of the Act comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice. The Landlord made an application under section 47 of the Act and provided the letter from the town as evidence that the unit must be vacated by order of a government.

Upon review of the letter from the town, I find that this letter does not order the unit to be vacated but orders that modifications are to be made to the building containing the Tenant’s unit. As the Landlord has not provided evidence that the unit must be vacated in order to comply with the town order and as the other reasons provided by the Landlord are not evidence in relation to the cause selected in the Notice, I find that the Landlord has not substantiated the cause as contained in the Notice and I find the Notice to be invalid.. I find therefore that the Tenant is entitled to cancellation of the Notice. I order the Notice to be cancelled and the tenancy continues.

As the Tenant’s application has been successful, I find that the Tenant is also entitled to recovery of the \$50.00 filing fee and I order the Tenant to deduct this amount from the next month’s rent payable to the Landlord.

Conclusion

The Notice is cancelled and the tenancy continues. I order the Tenant to deduct the amount of \$50.00 from the next rent payable to the Landlord.

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: September 12, 2011.

Residential Tenancy Branch