

DECISION

Dispute Codes CNC, FF

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for cause and a monetary order request for the recovery of the filing fee.

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

At the beginning of the hearing, it was clarified with both parties that since each had filed late evidence on November 18, 2011 that these two evidence packages filed by each party would be considered prejudicial and would not be considered for this hearing.

Issue(s) to be Decided

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

Background and Evidence

This current tenancy began on December 1, 2010 on a 12 month fixed term tenancy ending on November 30, 2011 as shown in the Landlord's evidence of the signed tenancy agreement. Both parties have acknowledged that each have initialled in section 2 (b) (ii) that the tenancy ends and the tenant must move out of the residential unit. This option shows as being selected and both parties have acknowledged that they have initialled this section. The Tenant states that he was forced to sign this section, but has failed to provide any evidence that he was forced to sign the tenancy agreement.

The Landlord states that the 1 month notice to end tenancy was served by registered mail on October 25, 2011. The Tenant confirms receiving the package on October 27, 2011. Both parties agreed that the listed reason for cause is shown as a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Landlord refers to the hand written notation that "end

of lease term” as the Tenant has expressed to the Landlord that he will not be vacating the rental.

Analysis

As both parties have attended the hearing and the Landlord has acknowledged receiving the Tenant’s notice of hearing package, I am satisfied that each has been properly served with the notice of hearing documents. The Tenant has also acknowledged receiving the Landlord’s evidence package filed in dispute.

Based upon the documentary evidence submitted, I find that the Tenant has established a claim to cancel the notice to end tenancy for cause. I find that the Landlord was premature in serving the notice on October 25, 2011 since the tenancy does not end until November 30, 2011. There can be no breach until the end of tenancy on November 30, 2011. The Landlord’s notice dated October 25, 2011 is set aside and the tenancy shall continue. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant’s application to cancel the notice to end tenancy is granted. The notice dated October 25, 2011 is set aside and the tenancy shall continue. The Tenant is 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: November 24, 2011.

Residential Tenancy Branch