

DECISION

Dispute Codes CNC

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for cause.

Both parties attended the hearing by conference call and gave testimony. The Tenant has not submitted any evidence. The Landlord has submitted late evidence in the form of written submissions. As both parties have attended the hearing, I am satisfied that both parties have been properly served with any documents for this dispute.

Neither party has submitted a copy of the notice to end tenancy for cause. Both parties agreed that the notice was dated January 5, 2012 and was served in person by the Landlord. The effective date of the notice is displayed as February 4, 2012. Both parties also agreed that there are two reasons for cause noted on the notice. The first reason is the tenant or a person permitted on the property by the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord.” The second reason noted is “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” As both parties have agreed that this is the notice, the hearing shall proceed on this basis in the absence of a copy of the notice.

Issue(s) to be Decided

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

Background and Evidence and Analysis

The Landlord has provided in direct testimony an array of issues that has caused the Landlord to issue this notice. The Tenant has disputed these allegations in her direct testimony. Further the Landlord has stated in his direct testimony that notice of these issues have been brought to the attention of the Tenant in verbal warnings to correct these issues. The Tenant disputes this stating that no such notices have ever been received.

As explained to the parties at the hearing the onus or burden of proof is on the party making the claim, in this case it is the responsibility of the Landlord as they have made the claim in their reasons for cause. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. On this basis, on a balance of probabilities I find that the Tenant has established her claim. The notice dated January 5, 2012 is set aside and the Tenancy shall continue.

Conclusion

The notice to end tenancy is cancelled.

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: January 31, 2012.

Residential Tenancy Branch