

## **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. Both parties have confirmed not submitting any evidence for this hearing. As both parties have attended the hearing and no evidence has been submitted by either party, I am satisfied that each has been properly served under the Act.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel a 1 month notice to end tenancy for cause?

### Background and Evidence

Both parties agreed that a signed tenancy agreement exists, but that neither has provided a copy as evidence that monthly rent is due on the 1<sup>st</sup> of each month. The Tenant states that a notice to end tenancy for cause dated February 12, 2012 was personally received from the Landlord on the same date. The effective date of the notice states that that effective move-out date is March 15, 2012.

The notice issued by the Landlord provides 3 reasons.

The first reason is that the Tenant is repeatedly late paying rent. The Landlord states that since the Tenancy began on September 1, 2011 that the Tenant is always late paying every month up until the date of this hearing. The Tenant disputes this. The Tenant states that she has been late twice on November 5, 2011 and February 3, 2012. The Tenant was also late paying rent on March 2, 2012 when the Landlord requested the delay of 1 day instead of paying it on March 1, 2012.

The second reasons listed is the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk. The Tenant disputes this. The Landlord states that the Tenant's partner has many persons visiting the rental and that the Landlord is unable to view/inspect the property to ascertain what is wrong. The Landlord is unable to provide any details of how these persons are putting the property

at risk. The Landlord also stated that no notices have been given to the Tenant for inspections of the rental.

The 3<sup>rd</sup> reason is listed as, Residential Tenancy Act Only: security or pet damage deposit was not paid within 30 days as required by the Tenancy Agreement. The Landlord states that there is a no pet clause in the Tenancy Agreement. The Tenant disputes this. Neither party has submitted a copy of the Tenancy Agreement. The Landlord also states that no demand for a pet damage deposit has been made. The Landlord states that she only found out about the dog after the Tenancy began. The Tenant disputes this stating that the Landlord was aware at the beginning of the Tenancy that she had a dog. The Tenant states that the Landlord has in the rental unit previously and has seen the dog and its' cage.

### Analysis

As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case as the Tenant is disputing the Landlord's notice, it is the responsibility of the Landlord to support her 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. The Landlord has failed to provide any evidence that would support the reasons for cause listed. The 1 month notice to end tenancy for cause dated February 12, 2012 is set aside and the Tenancy shall continue.

### Conclusion

The Tenant's application is granted and the notice to end tenancy for cause dated February 12, 2012 is set aside and the Tenancy shall continue.

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: March 06, 2012.

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Residential Tenancy Branch