



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for unpaid rent, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a valid 1 Month Notice to end Tenancy been issued and served upon the Tenant in accordance with section 47 of the Act?
2. Has a valid 10 Day Notice to end Tenancy been issued and served upon the Tenant in accordance with section 46 of the Act?
3. If so, has the Tenant been successful in proving that each of these Notices should be cancelled?
4. If not, did the Landlord attend the hearing and make an oral request for an Order of Possession?

Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement that began on August 1, 2011. Rent is payable on the first of each month in the amount of \$1,350.00 and on August 1, 2011 the Tenants paid \$675.00 as the security deposit. The tenancy agreement included a clause that stipulates the house is for sale and that if the Landlord wished to end the tenancy two months notice would be provided with one month's free rent as compensation for ending the tenancy.

The Tenants affirmed they received two Notices to end tenancy and that one was a 10 Day Notice to End Tenancy for unpaid rent and the other was a 1 Month Notice. They argued that the 1 Month Notice was issued because the Landlord wanted to renovate

the property. They confirmed they did not pay March 2012 rent and stated that they sent the Landlord a text message informing her that this would be their free month's rent.

The Landlord testified that the 10 Day Notice, a mutual agreement to end, and a 1 Month Notice were all issued March 3, 2012 and were taped to the Tenants' door the same day. She states the 1 Month Notice was issued for repeated late payment of rent arguing that the Tenants have failed to pay rent for March 2012 and paid January and February 2012 rents on or after the second of each month.

The Landlord confirmed it was her understanding that the Tenants would be entitled to one month's free rent if she ended their month to month tenancy. She stated she appeared here today to seek to have the tenancy ended on March 31, 2012.

After a brief discussion the Landlord offered the opportunity to settle the matter and allow the Tenants to continue to occupy the unit until April 30, 2012 if certain conditions were met.

During the hearing each Tenant was asked three times if they wished to settle the matter to end the tenancy as of April 30, 2012 and they continued to answer "no".

Analysis

The Tenants have applied to cancel a 1 Month Notice to End Tenancy for Cause and to cancel a 10 Day Notice to End Tenancy for unpaid rent. The Tenants submitted a copy of the 10 Day Notice into evidence however they did not provide a copy of the 1 Month Notice.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants.

The Notices to End Tenancy documents are not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Tenants' claim, in particular when he is asking to have this document cancelled.

The responsibility of proving a claim is on the person making the claim. The parties were in dispute as to the reasons why the 1 Month Notice was issued, the Landlord stated it was for repeated late payment of rent and the Tenants state it was for renovations. As the Tenants failed to provide a copy of the Notice, I find the Tenants have provided insufficient evidence to prove their claim. Therefore, I dismiss their application to have the 1 Month Notice to End Tenancy set aside, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

In this case the Landlord did appear and requested that the tenancy be ended as of March 31, 2012.

Having issued the Order of Possession above, there is no need to make any findings pertaining to the 10 Day Notice.

The Tenants have not been successful with their application; therefore they must bear the burden of the cost to file their application.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective March 31, 2012, at 1:00 p.m. This Order is legally binding and must be served upon the Tenant.

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 27, 2012.

Residential Tenancy Branch