

## **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. As both parties have attended the hearing and have acknowledged receiving the evidence submitted by the other 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 the notice to end tenancy for cause?

### Background and Evidence

This Tenancy began August of 2011. Both parties agree that the 1 month notice to end tenancy for cause dated March 27, 2012 was served by posting it on the door. The Landlord states that it was posted on the door on March 27, 2012 and the Tenant has confirmed receipt of the notice on the morning of March 28, 2012.

The Landlord has provided 2 reasons for cause listed on the notice. The first reason is the Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The second reason listed the Tenant has engaged in illegal activity that has , or is likely to adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord. The Tenant has stated that he is disputing this.

The Landlord states that through an accumulation of property in the rental unit has caused an infestation of bedbugs. The Tenant disputes this stating that there is an ongoing bedbug problem since the beginning of his tenancy that the Landlord has chosen not to deal with. The Landlord states that through his experience and the Tenant's pattern of behaviour that it is obvious that the Tenant is responsible. The Landlord stated in his direct testimony that the rental was previous infested with bed bugs and that a mattress provided by the Landlord was left over from that Tenancy and is currently being used by the Tenant. The Landlord has submitted various photographs of a cluttered room. Both parties agree that there are bedbugs in the rental. The Landlord cites other issues such as the Tenant installing a hasp on the outside of his rental unit without providing a key. The Tenant disputes this stating that when the Tenancy began there was a hasp on the door which was removed by the Landlord. The

Tenant later in the Tenancy installed a hasp to secure his door. The Landlord confirmed this in his testimony. The Tenant stated in his testimony that he installed the hasp without gaining permission from the Landlord. The Landlord stated that he did not give notice of a warning for the Tenant to remove the hasp or provide a combination for the lock and instead served the Tenant with a notice to end tenancy. The Landlord also refers to this as his second reason for cause. The Landlord also cites that with the accumulation of so many items that there is a fire code breach. The Landlord states that no health or safety officials have been contacted for an inspection and that the Landlord chose to serve the Tenant with this notice end tenancy instead.

### Analysis

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible they have made the allegation 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. I found that the testimony of both parties to be inconsistent and contradictory. The Landlord has failed to provide any conclusive evidence to support his claim that the Tenant was responsible for the infestation of bedbugs. I find that it was possible that the Bedbugs were left over from the previous Tenant in the mattress and that this could be a likely cause. As such, I am not satisfied with the evidence submitted by the Landlord in their reasons for cause and set aside the notice to end tenancy dated March 27, 2012. The Tenant's application is granted. The Tenancy shall continue.

### Conclusion

The Tenant's application is granted and the notice dated March 27, 2012 is set aside.

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: April 25, 2012.

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Residential Tenancy Branch