

DECISION

Dispute Codes MT, CNC

Introduction

This is an application filed by Tenant to allow more time to make an application to cancel a notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. The Landlord has submitted no documentary evidence. As both parties have attended the hearing and the Landlord has confirmed receipt of the Tenant's application and documentary evidence package, I am satisfied that each has been properly served with the notice of hearing and evidence submitted under the Act.

At the beginning of the hearing, J.W. called into the hearing as a Landlord as the named Landlord J.D. was deaf and not available. J.W. states that she is a Landlord as well for this tenancy. The Tenant has acknowledged that J.W. is a Landlord and seeks to have the application amended to include her name. The application is amended to include the second Landlord, J.W.

The Tenant has made an application for more time to make an application to cancel a notice to end tenancy for cause. The Landlord states that she is not concerned about the application limitation period and wishes to continue with the dispute hearing on its merits. As such, I find that there is no prejudice to the Landlord for continuing the hearing on the merits of the notice.

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 on November 15, 1999 on a month to month basis as shown in the submitted copy of the signed tenancy agreement. Monthly rent is payable on the 1st of each month.

Both parties agree that the Landlord, J.D. personally served the Tenant with the 1 month notice to end tenancy for cause dated April 7, 2012 on April 7, 2012. Both parties agree that the notice was issued with 5 reasons selected.

- 1) Tenant has allowed an unreasonable number of occupants in the unit/site.
- 2) Tenant or a person permitted on the property by the tenant has;
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - put the landlord's property at significant risk.
- 3) Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Tenant is adamant that none of these things took place and dispute the Landlord's notice and reasons for cause. The Landlord states that she is unable to provide any details of the reasons for cause. The Landlord states that she cannot provide any information on what verbal complaints were received or when or from whom. The Landlord has made a general statement that she has received verbal complaints from other tenants of noise causing her to think that there are an unreasonable number of occupants in the rental unit. The Tenant disputes this. The Landlord states that these details are for all of the reasons noted for cause.

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 the Landlords are responsible as they have served the notice to end tenancy for cause which is disputed by the Tenant. 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 not been able to provide any details of the complaints or if notice of these complaints were communicated to the Tenant to correct this behaviour. I find on a balance of probabilities that the Landlord has failed to provide sufficient details to support the notice to end tenancy dated April 7, 2012 and the

Tenant's application is granted. The notice dated April 7, 2012 is set aside and the tenancy shall continue.

Conclusion

The Tenant's application to cancel a notice to end tenancy is granted and the notice dated April 7, 2012 is set aside. 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: May 18, 2012.

Residential Tenancy Branch