

DECISION

Dispute Codes DRI, CNC, CNL

Introduction

This is an application filed by the Tenant to dispute an additional rent increase, to cancel a notice to end tenancy for cause and to cancel a notice to end tenancy for the Landlord's use of the property.

Both parties attended the hearing by conference call and gave testimony. The Tenant states that the Landlord was served with the notice of hearing and evidence package by Canada Post Registered Mail on April 23, 2012. The Landlord confirms this, but states that the package was not picked up because of ill health. Both parties agree that the Landlord received a letter sent by regular Canada post on May 4, 2012. The letter to the Landlord states that the Landlord should pick up the Registered Mail package in preparation of the hearing date. The Landlord has not picked up the registered mail package. The Tenant has submitted copies of receipts issued for rent paid. The Landlord has acknowledged that these receipts were issued. The Landlord has submitted no documentary evidence. As such, I find that both parties have been properly served with the notice of hearing and evidence package submitted by the Tenant via Canada Post Registered Mail on April 23, 2012 and the Landlord is deemed to have been properly served under the Act, 5 days later on April 28, 2012.

Aspects of the Tenant's application were clarified at the beginning of the hearing. The Tenant states that no such notice of an additional rent increase was given by the Landlord. The Landlord confirms this in her direct testimony. On this issue, I find that as no notice of an additional rent increase was given that this portion of the Tenant's application is dismissed. The Tenant has also made an application to cancel a notice to end tenancy for landlord's use of the property. It was clarified by the Tenant that no such notice was issued by the Landlord. The Landlord confirms that no such notice for landlord's use of the property was issued. On this portion of the Tenant's application, I find that as no notice was issued that this portion of the Tenant's application is dismissed. This leaves the Tenant's application to cancel a notice to end tenancy issued for cause dated April 15, 2012..

Issue(s) to be Decided

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

Background and Evidence

Both parties agreed that the Landlord issued a 1 month notice to end tenancy for cause dated April 15, 2012 with an effective date of May 31, 2012. Both parties further agree that two reasons for cause were selected.

- 1) Tenant is repeatedly late paying rent.
- 2) Rental unit/site must be vacated to comply with a government order.

It was clarified by both parties during the hearing that the Landlord is not in possession of any government order requiring the vacant possession of the rental unit. On this portion of the application, the Landlord has withdrawn this reason for cause stated on the notice.

The Landlord states that the Tenant is repeatedly late paying rent. As no documentary evidence was submitted by the Landlord, the Landlord was requested to provide details of the repeated late rent payments. The Landlord stated that she was unable to provide any details, but that the March 2012 rent was late. The Tenant disputed this and referred to the 6 copies of rent receipts issued for March 2011 to May 2011 and September 2011 to November 2011 where rent receipts were issued for the 1st of the month.

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 Landlord is responsible as she has made a claim by issuing the notice to end tenancy dated April 15, 2012. The Tenant is disputing this. 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 find that in the absence of any evidence to support the Landlord's claim of repeated late rent payments that the Landlord has failed to establish her reason for cause on the notice. The Tenant has provided partial rent

payment evidence and I find on a balance of probabilities that the Tenant has established a claim to cancel the notice to end tenancy for cause dated April 15, 2012. The notice is set aside and the Tenancy shall continue.

Conclusion

The Tenant's application is granted and the notice dated April 15, 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: May 14, 2012.

Residential Tenancy Branch