



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were not served to the Tenant. As this evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

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Issue(s) to be Decided

The issues to be decided in this decision are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2011; that the parties entered into a written tenancy agreement; and that the tenancy agreement requires the Tenant to pay monthly rent of \$1,250.00 by the first day of each month.

The Agent for the Landlord stated that a One Month Notice to End Tenancy, which had a declared effective date of August 02, 2012, was mailed to the Tenant on June 28, 2012. The Tenant agreed that he received the Notice to End Tenancy in the mail, although he cannot recall the date it was received. The parties agree that the reason cited for ending the tenancy on the Notice to End Tenancy is that the Tenant has

breached a material term of the tenancy that was not corrected within a reasonable time.

The Agent for the Landlord stated that there is a term in their tenancy agreement that requires the Tenant to comply with government regulations and strata bylaws, and to pay charges imposed by the strata corporation for actions of the Tenant. A copy of the agreement outlining this term of the tenancy agreement was not submitted to the Residential Tenancy Branch by either party. The Tenant stated that he does not have a copy of the tenancy agreement with him and he does not recall this term of his tenancy agreement.

The Agent for the Landlord stated that it has received three "fine letters" from the strata corporation which declare that fines have been imposed as a result of the Tenants breaching city and strata bylaws. The Landlord and the Tenant agree that these letters were forwarded to the Tenant and that the Tenant has not yet paid the fines.

The Agent for the Landlord stated that on May 07, 2012 an email was sent to the Tenant asking him to pay the fines. He acknowledged that the Landlord has not sent a letter specifically asking the Tenant to comply with the term of the tenancy agreement that requires the Tennant to pay fines imposed by the strata corporation.

Analysis

Section 47(1)(h) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I find that the Landlord has submitted insufficient evidence to show that there is a material term in the tenancy agreement that requires the tenant to comply with government regulations and strata bylaws, and to pay charges imposed by the strata corporation for actions of the Tenant. In reaching this conclusion I was influenced, in part, by the fact that the tenancy agreement outlining this term was not submitted in evidence; in part, because the Tenant could not recall whether his tenancy agreement included this term; and in part, because the Landlord did not inform the Tenant, in writing, that this particular term of the tenancy agreement was considered a material term of the tenancy agreement.

As the Landlord has failed to establish that there is a material term in the tenancy agreement that requires the tenant to with government regulations and strata bylaws, and to pay charges imposed by the strata corporation for actions of the Tenant, I find that the Landlord has failed to establish that it has the right to end the tenancy for a breach of this section. I therefore grant the application to set aside this Notice to End Tenancy.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(h) of the *Act*, I find that this tenancy shall continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from one rent payment, as compensation for the filing fee paid for this Application for Dispute Resolution.

I specifically note that my decision today does not serve to establish that there is not a term in the tenancy agreement that requires a tenant to pay fines imposed by the strata corporation. Rather, my decision is simply a finding that the Landlord has failed to prove this is a material term of the tenancy agreement for the purposes of this hearing.

For the benefit of both parties, I note that had the Landlord been able to establish that there was a term in the tenancy agreement that required the Tenant to pay fines imposed by strata corporation; that the Landlord had been able to establish that the Tenant had breached strata bylaws that resulted in penalties being imposed; and that the Tenant had not paid fines imposed by the strata corporation, I would likely have concluded that the Landlord had grounds to end the tenancy.

The Landlord retains the right to serve the Tenant with another Notice to End Tenancy if the parties are unable to resolve their dispute over payments of fines.

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: July 25, 2012.

Residential Tenancy Branch