

DECISION

Dispute Codes CNC, AAT, FF

Introduction

This hearing dealt with an application by the tenant to cancel a 1 Month Notice to End Tenancy (the Notice), dated December 24, 2012, and for the landlord to allow access to or from the rental unit by the tenant or the tenant's guests, and to recover the filing fee.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail sent on January 10, 2013 in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided proof of the registered mail service with the requisite tracking number.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the Notice to End dated December 24, 2012 be set aside?
Should the landlord be Ordered to allow access to the tenant or the tenant's guest(s)?
Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The landlord did not appear in the hearing to defend their reasons respecting the Notice to End, or to request an Order of Possession. The tenant testified they are not certain of the landlord's reasons for wanting to end the tenancy but have, by letter, told the tenant they can remain in the tenancy until they find other accommodations.

The tenant also testified the landlord is restricting access to the tenant's son, for reasons which are not clear or justified and seemingly based on unsupported assumptions. The tenant does not regard the landlord's position as reasonable or with cause.

Analysis

On preponderance of the evidence before me I find the landlord's Notice to End *may* have been issued for valid reasons but the landlord did not attend to defend their reason(s) or request an Order for Possession, therefore I find any such reason(s) no longer constitutes the basis for a dispute between the parties. As a result, **I Order** the Notice to End December 24, 2012 is cancelled, or set aside.

Again, given the landlord's absence from the hearing, I am unable to ascertain the landlord's justification for restricting the tenant's rights in respect to access to or from the rental unit. None the less, I see no prejudice to either party by highlight the following from the Residential Tenancy Act: **emphasis mine**

Tenant's right of access protected

30 (1) A landlord must not **unreasonably** restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

I decline to Order the landlord to comply with the Act, however, the tenant is at liberty to reapply should they determine the landlord is *unreasonably* denying access to them or their guests.

As the tenant has been successful in their claim, the tenant is entitled to recover their filing fee from the landlord in the amount of **\$50.00**.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$50.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: January 31, 2013

Residential Tenancy Branch