



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a letter to terminate the tenancy for cause issued on May 13, 2013, and to recover the cost of filing their application.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the letter issued on May 13, 2013, to terminate the tenancy be cancelled?
Is the tenant entitled to recover the cost of filing their application from the landlord?

Background and Evidence

The landlord testified that she served the tenant with a letter to terminate the tenancy on May 13, 2013, for noise complaints. The landlord stated she did not use the prescribed form required by the Act.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 44 of the Act it states,

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

Under section 47 of the Act the landlord's notice must comply with section 52 of the Act. 52 of the Act states, in order for a notice to be effective, a notice to end a tenancy must be in writing and when given by a landlord, be in the approved form.

The evidence of the landlord was that they provided the tenant with a letter to terminate the tenancy for cause and did not use the approved form under the Act. The landlord is in the business of renting and has a duty to abide by the laws pertaining to residential tenancies. Therefore, I find the landlord did not comply with section 44, 47 and 52 of the Act. Therefore, the tenant's application is granted. I order that the tenancy will continue until legally ended in accordance with the Act.

As the tenant was successful with their application, the tenant is entitled to recover the cost of the filing fee from the landlord. Therefore, I authorize the tenant a onetime rent reduction in the amount \$50.00 from a future rent payable to the landlord to recover the cost of filing their application in full satisfaction of this portion of their claim.

Conclusion

The tenant's application to cancel a letter to terminate the tenancy is granted. The letter issued on May 13, 2013, has no force or effect under the Act. The tenancy will continue until legally ended in accordance with the Act.

I authorize the tenant a onetime rent reduction in the amount \$50.00 from a future rent payable to the landlord to recover the cost of filing their application in full satisfaction of this portion of their claim.

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 02, 2013

Residential Tenancy Branch