

## **Decision**

**Dispute Codes:** CNC

### **Introduction**

This is an Application for Dispute Resolution by the tenant to cancel the One-Month Notice to End Tenancy for Cause dated June 30, 2008. Both parties appeared and gave affirmed testimony in turn. An advocate for the tenant, and 2 witnesses appeared, one witness for the tenant and one witness for the landlord.

The first page of the One-Month Notice to Notice to End Tenancy for Cause was submitted into evidence. Apparently this notice indicated that “ *the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or the landlord*”

### **Issue(s) to be Decided**

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence is:

- Whether the criteria to support a One-Month Notices to End Tenancy under section 47 of the *Residential Tenancy Act*, (the *Act*), has been established by the landlord or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

**Burden of Proof:** The burden of proof is on the landlord to establish that the notice was justified.

### **Background and Evidence**

The tenant has been a resident in the complex for approximately 25 years and pays rent of \$586.00 per month. A previous hearing was held on the landlord's application seeking an Order of Possession based on the June 30, 2008 Notice.

However at the previous hearing, a finding was made that the tenant did not receive the One-Month Notice to End Tenancy for Cause dated June 30, 2008 until August 27, 2008 and accordingly the Disputer Resolution Officer found that the landlord's application for dispute resolution was premature. Therefore the application was dismissed with leave to reapply.

The tenant, having been deemed served with the One-Month Notice to End Tenancy for Cause on August 27, 2008, was then within the time deadline to make an application to dispute the notice and submitted the application before me, on September 4, 2008, seeking an order to cancel the notice.

The Landlord testified that the notice to end tenancy was issued because of the tenant's failure to maintain her residence to the minimum standards of hygiene. The landlord testified that the tenant has failed to properly care for her animals and the urine and feces was causing a serious an odour problem that affected other residents in the complex. The landlord testified that the tenant also persisted in gathering up and storing recycling materials that emanate putrid smells in the unit extending into the hallway outside her door. The landlord testified that the unhygienic conditions were also responsible for creating a cockroach infestation that required the landlord to incur costs for fumigation. The landlord testified that this was the basis of the Notice to End Tenancy. No evidentiary material or documents were submitted by the landlord. However, a witness for the landlord supported the allegations and stated that the tenant has a disabling condition making it difficult to communicate with the tenant at times.

The tenant testified that her unit is in clean condition, that she has not stockpiled recyclables and that her animals are always clean and well-cared for. The advocate and witness both endorsed this testimony and testified that the tenant is being helped and supported with housekeeping services to ensure that the unit is always kept clean, maintained and tidy.

### **Analysis**

While I accept the landlord's testimony that complaints may have been made about odours relating to the tenant and the tenant's unit, and that there was a problem with cockroaches in the building, it does not follow that this constitutes proof that the tenant is responsible for jeopardizing the health and safety of other occupants. The burden of proof is on the landlord to establish that ending the tenancy under section 47 is warranted.

It is important to note that the two parties and the testimony each puts forth, are not standing upon equal ground. The reason that this is so, is because one party must carry the burden of proof. In other words, the party seeking to end the tenancy, in this case the Landlord, has the onus of proving, during these proceedings, that ending the tenancy is justified under the Act. In situations, such as this, where the evidence consists only of conflicting verbal testimony, then the party who bears the burden of proof will not likely succeed.

Given the landlord's failure to meet the requisite burden of proof, and in light of the fact that the tenant has acknowledged that it is her responsibility to maintain her unit and pets in a reasonably clean and orderly way to basic standards of hygiene and the tenant's awareness that failing to do so could place the future of this tenancy in serious jeopardy, I find that the notice to end tenancy must be cancelled.

### **Conclusion**

Based on the above, I hereby order that the One-Month Notice to End Tenancy dated June 30, 2008 be cancelled and of no force nor effect.

September 22, 2008

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