



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC, OLC, FF

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, and to make submissions to me.

At the hearing the Tenants withdrew their application for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, after it was determined that the dispute relates entirely to their desire to have the Notice to End Tenancy set aside.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy should be set aside and if the Tenant is entitled to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to 72 of the *Act*.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on January 01, 2001.

The Landlord and the Tenants agree that a 1 Month Notice to End Tenancy for Cause was personally served on the Tenants on August 17, 2008. The Notice to End Tenancy was not before me at the time of the hearing, however the Tenant was provided with the opportunity to send it to me by fax. At the hearing the Tenant read a portion of the Notice to End Tenancy, at which time he reported that the tenancy was being ended by virtue of section 27(i) of the *Act*. The Landlord did not have a copy of the Notice to End Tenancy with him at the hearing, although he stated that the Notice was a notice he has possessed for some time.

The faxed copy of the Notice to End Tenancy, which I received today, confirms that the Notice to End Tenancy indicated that the tenancy was being ended pursuant to section 27 of the Act.

Analysis

Section 27 of the *Act*, which is the section referred to on this Notice to End Tenancy, relates to terminating or restricting services. Section 27 of the *Act* does not relate to ending a tenancy by a landlord.

Section 47 of the *Act* stipulates that a landlord may end a tenancy in respect of a rental unit for a variety of reasons. Section 47(3) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*.

Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy must be in the approved form when given by the landlord.

Section 10(1) of the Act stipulates that the director may approve forms for the purposes of the Act. Section 10(2) of the Act stipulates that deviations from an approved form that do not affect its substance and are not intend to mislead does not invalidate the form used.

In the circumstances before me I find that the Landlords served the notice to end the tenancy on a form from 1995, which is no longer the form that is approved by the director. I find that the form used by the Landlords significantly deviates from the form approved by the director, as this form states that the tenancy is being ended pursuant to section 27 of the *Act*, although the Landlords is actually seeking to end the tenancy pursuant to section 47 of the *Act*. Although I do not find that the Landlords was intentionally misleading the Tenant, I do find that the information contained on the Notice to End Tenancy is inaccurate, which affects the substance of the Notice. I therefore find that the Landlords did not comply with section 52(e) of the Act when they served the Tenant with an outdated Notice to End Tenancy.

As the Tenants' application to set aside this Notice to End Tenancy has merit, I find that the Tenants are entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Conclusion

As the Tenants were not properly served notice to end this tenancy pursuant to section 47 of the Act, I hereby set aside the Notice to End Tenancy, dated August 17, 2008, pursuant to section 68(2)(b) of the *Act*, and I order that the tenancy continue until it is ended in accordance with the *Act*.

I find that the Tenants have established a monetary claim, in the amount of \$50.00, in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution.

Based on these determinations, I hereby authorize the Tenants to reduce their next monthly rent payment by \$50.00.

Date of Decision: September 15, 2008
