

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy issued for cause.

The tenant's agent served the hearing documents to the landlord via registered mail on April 3, 2009 and the evidence was sent via registered mail to the landlord on April 6, 2009. Canada Post tracking numbers were provided in the agent's testimony.

The tenant and his agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, in documentary form, and to make submissions to me.

The landlord failed to appear at the hearing despite being served with the notice of dispute resolution in accordance with section 89 of the Residential Tenancy Act.

Issue(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel a Notice to End Tenancy under Section 47 (4) of the *Residential Tenancy Act*
- Whether the tenant is entitled to recover the cost of this application from the landlord.

Background and Evidence

The month to month tenancy began back in 1999 or 2000 with a current rent of \$1,200.00 payable on the first of each month. The tenant could not recall the exact amount of the security deposit he paid and stated that his lawyer looks after all of his financial affairs and would have record of the deposit being paid.

The tenant testified that the tenancy agreement is a verbal agreement and that the landlord had known for several years that the tenant smokes marihuana for medical purposes.

The agent testified that the landlord contacted the tenant during the month of March to advise the tenant that the landlord was going to bring an insurance adjuster through the rental property and that the landlord and adjuster never attend the rental unit.

The agent stated that the tenant is disabled and that on March 31, 2009; during one of the tenant's naps the landlord entered the rental unit, unannounced, and left a 1 Month Notice to End Tenancy on the tenant's kitchen table. The notice had a check mark in the section under cause which states the tenant put the property at risk and has caused damage to the landlord's property.

The agent testified that the tenant has 15 marihuana plants that he grows in the rental unit for his own medicinal consumption. The documentary evidence supports the agent and tenant's testimony that he has authorization to possess and a licence to produce marihuana for medical purposes.

The agent stated that all of the tenant's equipment used to grow the marihuana is standard and legal and that the tenant has not violated any electrical regulations as all of his equipment plug into regular electrical outlets and the tenant has not made any changes to the wiring of the home.

Analysis

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I find that the landlord has contravened Section 29 of the *Act* which stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: (a) the tenant gives permission at the time

of the entry or not more than 30 days before the entry; (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

With respect to the 1 Month Notice to End Tenancy the burden of proof is on the landlord to prove the tenant has significantly put the landlord's property at risk and has caused extraordinary damage to the landlord's property. The landlord failed to attend the hearing despite being served notice in accordance with section 89 of the *Act*. I find that the landlord has failed to prove that the tenant has significantly put the landlord's property at risk and has caused extraordinary damage to the landlord's property and I hereby cancel the 1 Month Notice to End Tenancy for Cause.

As the tenant has been successful with his application I find he is entitled to recover the cost of the filing fee for this application, from the landlord.

Decision

I Hereby Order that the 1 Month Notice to End Tenancy, issued on March 31, 2009, is cancelled, and is of no force or effect.

I HEREBY FIND in favor of the tenant's claim to recover the filing fee from the landlord and **Hereby Order** the tenant to deduct \$50.00 from his June 1, 2009 rent payable to the landlord, in satisfaction of this 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: May 21, 2009.

Dispute Resolution Officer