

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for the landlord's use of property and to recover the cost of the filing fee from the landlord.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, served in person, by the tenant to the landlord, at the landlord's residence on May 8, 2009 at 11:00 a.m.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the tenant proven that the Notice to End Tenancy issued by the landlord is to be cancelled pursuant to Section 49(8)?

Background and Evidence

The month to month tenancy began June 1, 2006. Rent is payable on the first of each month in the amount of \$525.00. The tenant paid a security deposit of \$250.00 on June 1, 2006.

The tenant's business advisor has been working with the tenant since February 2009, through a government sponsored agency which assists clients in starting their own

home based business. The landlord requested that her business advisor speak as the landlord's agent during this hearing.

The business advisor confirmed that the landlord issued the tenant the hand written 3 day notice to end tenancy but that the landlord later found out what her obligations were under the *Residential Tenancy Act* and issued the tenant a proper 2 Month Notice to End Tenancy for Landlord's use. The business advisor testified that she has been working with the landlord since February, 2009 to get the landlord's home based hair salon built and operational according to Municipal regulations. The business advisor confirmed that the landlord has a business license, has had two health inspections, has registered her business name, and is awaiting access to the rental unit to obtain the final permits.

The tenant testified that he was aware that the landlord was constructing a hair salon and that the landlord has been trying to get plumbers, inspectors and contractors into his rental unit to begin the construction process and that this has been interfering with his sleep. The tenant advised that he works a night shift from 8:30 p.m. to 7:00 a.m. and that the contractors have been jack hammering and making all kinds of noise during the time he needs to sleep.

The tenant testified that he is in agreement to vacating the rental unit based on the official 2 Month Notice to End Tenancy and will vacate the rental unit as of July 31, 2009 at 1:00 p.m.

A negotiation took place, with respect to the tenant's entitlement to compensation equivalent to one months rent (\$525.00) as a result of the 2 Month Notice to End Tenancy, and an agreement was made whereby the \$525.00 compensation owed to the tenant by the landlord, is to be paid to the tenant on July 31, 2009 and that the tenant will pay his July rent in full on July 1, 2009.

The landlord's business advisor stated that it has been very difficult to get the landlord's permits completed as the tenant is refusing access to the rental unit during regular working hours. The business advisor stated that they need to allow a plumber access to the rental unit to evaluate what work needs to be done and to provide the landlord with a proper quote.

After a brief discussion, an agreement was reached between both parties whereby the tenant will allow a plumber access to the rental unit on Thursday June 25, 2009 at 3:00 p.m., and that this plumber will access the rental unit to determine what work needs to be done and will not conduct any work during this visit.

Analysis

The tenant has agreed to comply with the 2 Month Notice to End Tenancy and will vacate the rental unit effective July 31, 2009 at 1:00 p.m. An Order of Possession will be issued in favour of the landlord.

The landlord is ordered to pay the tenant one month's rent of \$525.00 on July 31, 2009, as compensation for the 2 Month Notice to End Tenancy pursuant to Section 51 of the *Residential Tenancy Act*, providing that the tenant pays his July 1, 2009 rent in full.

The landlord is instructed to administer the tenant's security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

The landlord is to arrange a move-out inspection with the tenant and complete the required move-out inspection check list in accordance with Section 35 of the *Residential Tenancy Act*.

I find that the notice to end tenancy is valid and enforceable and that as a result the tenant is not entitled to recover the cost of the filing fee for this application from the landlord.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **July 31, 2009 at 1:00 p.m.** This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

If the tenant does not allow the plumber access to the rental unit as agreed to, I hereby grant the landlord the authority to enter the rental unit on Thursday June 25, 2009 at 3:00 p.m. to escort the plumber through the rental unit to conduct an estimate of the required work.

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: June 16, 2009.

Dispute Resolution Officer