



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy and to recover the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on July 07, 2009. The tenant provided a tracking number. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on December 14, 2008. On July 02, 2009, the landlord served the tenant with a two-month notice to end tenancy for landlord's use of property.

The landlord resides out of Canada and communicates with the tenant by phone or email. The tenant gave sworn testimony that on August 13, 2009, she had spoken with the landlord by phone. During the conversation, the parties turned their minds to compromise and achieved a resolution of their dispute.

The tenant stated that the landlord agreed to cancel the notice to end tenancy and to allow the tenancy to continue.

Analysis

In order to support the notice to end tenancy, the landlord must attend the hearing and give affirmed testimony that he intends in good faith to occupy the rental unit. In this case, the landlord did not attend the hearing and in addition, the tenant testified under oath, that the landlord had agreed to cancel the notice to end tenancy and that he would allow the tenancy to continue.

Based on the undisputed testimony of the tenant and in the absence of evidence to the contrary before me, I find that the parties compromised and achieved a resolution of their dispute. Accordingly the notice to end tenancy dated July 02, 2009 is set aside. As a result, the tenancy shall continue in accordance with its original terms.

Since the parties came to a mutual agreement, I find that the tenant's application was not necessary and therefore the tenant must bear the cost of filing this application.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

Dated August 17, 2009.

Dispute Resolution Officer