



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel the One Month Notice to End Tenancy for Cause and a Monetary Order to recover the filing fee.

The tenant served the landlord in person on October 11, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Are the tenants entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This month to month tenancy started on November 01, 2006. Rent for this unit is \$980.00 per month and is due on the first of each month. The tenants paid a security deposit of \$440.00 on October 02, 2006.

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenants testify that the landlords' agent served them with a One Month Notice to End Tenancy for cause on October 02, 2009 to vacate the rental unit on November 30, 2009. The reasons given in the Notice are that the tenants have significantly interfered with or unreasonable disturbed another occupant or the landlord and the tenants have engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord. The tenants dispute these reasons. They testify that they have never distributed any other occupants or the landlord and do not make undue noise or hold parties in the rental unit that could interfere with or disturb other occupants or the landlord. The tenants also dispute that they have engaged in any illegal activity and state that on one occasion the landlords' agent called the police to the unit for no reason. The tenants claim that the landlords' agent has confronted them on numerous occasions since they would not cooperate with her in providing another tenants name who was asking all the tenants to sign a petition against her. They claim that since that time she has made many false accusations that the tenants are loud or holding noisy parties.

The tenants gave the landlord one month written notice to end the tenancy on October 30, 2009 to vacate the rental unit on November 30, 2009; however, the tenants still wish to pursue their application to cancel the Notice to End Tenancy.

The landlords' agent testifies that she has received repeated complaints from other tenants about these tenants causing noise and other disturbances. She claims that some tenants have moved out due to these tenants being loud and causing disturbances at odd hours. The landlords' agent states that she has not presented any evidence from witnesses as the tenants have given her notice to end the tenancy by November 30, 2009.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue until the date of the tenants notice to end the tenancy.

As the tenants have been successful with their application they are entitled to recover the \$50.00 filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, October 02, 2009 is cancelled and the tenancy will continue. As the tenants have decided to move out of the rental unit by the effective date of the Notice the tenancy will continue until November 30, 2009. As the tenants have been successful in setting aside the Notice, they are entitled to recover their \$50.00 filing fee for this proceeding.

I HEREBY ORDER the landlord to repay the sum of **\$50.00** to the tenants for the cost of this proceeding.

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: November 24, 2009.

Dispute Resolution Officer