



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, ERP, RP, FF

Introduction

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The respondent did not appear at the scheduled time for the hearing. I waited 9 minutes and a representative of the landlord then appeared on the telephone line for a brief moment. She identified herself but then her presence was replaced by elevator music. I waited a further 10 minutes monitoring the telephone conference line but the representative of the landlord either chose or was not able to re-appear. I proceeded in the absence of the landlord and in the presence of the applicant.

I find that the Notice to End Tenancy was personally served on the Tenant on July 31, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 29, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated July 31, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began approximately 2 years ago. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable on the first day of each month.

Grounds for Termination

Neither party provided the Residential Tenancy Branch with a copy of the Notice to End Tenancy. However, the tenant testified the Notice relies on section 47(1)(d) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

Analysis

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities based on evidence presented at the hearing. The landlord failed to present evidence at the hearing. As a result I determined the landlord has failed to establish sufficient cause to end the tenancy. The landlord produced photographs which show the tenant has left a significant mess. The tenant testified he has cleaned the mess. I was not able to consider this evidence in the absence of testimony from the landlord stating when the photographs were taken etc.

Determination and Orders

As a result I ordered that the Notice to End Tenancy dated July 31, 2014 be cancelled. The tenancy shall continue. I further order that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent.

The tenant raised a number of other claims in the Application for Dispute Resolution. The Application referred to two attached pages. Those pages were not included in the Application for Dispute Resolution on file with the Residential Tenancy Branch. Also I have not received any evidence from the tenant. I determined it was appropriate to dismiss the remaining claims with liberty to re-apply.

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: October 09, 2014

Residential Tenancy Branch

