

## DECISION

Dispute Codes      CNC, FF

### Introduction

This is an application filed by the Tenant for an order to cancel a notice to end tenancy for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Neither party submitted any evidence. As both parties are in attendance and no evidence has been submitted, I am satisfied that that both parties have been properly served under the Act.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for cause?

### Background and Evidence

The Tenant states that a 1 month notice to end tenancy for cause was received on February 17, 2012. The notice did not display any reasons for cause. The Tenant also states that the Landlord served a new notice dated February 21, 2012 with 3 reasons for cause shown. The reasons selected are: The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and put the Landlord's property at significant risk. The Landlord confirms delivery of both notices. The Landlord disputes the Tenant's claim that no reasons were selected on the February 17, 2012 notice and has confirmed the reasons listed on the February 21, 2012. The Landlord states that he has given multiple verbal warnings to the Tenant to comply with directions to clean up and organize many boxes in the rental so that the Pest Control Technicians may treat the rental unit for bed bugs. The Tenant disputes that no such warning were given. Both parties confirm that the Landlord served the Tenant with a written notice to deal with these boxes for the Pest Control Technicians a few days before this hearing on March 5, 2012. Both parties agreed that the notice dated February 21, 2012 shows an effective date of March 31, 2012.

Analysis

As neither party has submitted any evidence, the direct testimony of both parties is being relied upon for this hearing. The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as the Tenant has made an application to dispute the notice. The Landlord must prove his reason for cause. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As the Landlord has issued a new notice regarding this dispute, I find that the notice dated February 17, 2012 was withdrawn by the Landlord as imperfect and is cancelled. I also find on a balance of probabilities that the Landlord has failed to establish his reasons for cause on the notice dated February 21, 2012. The Landlord has not provided any supporting evidence for any of the reasons listed on the notice. The notice dated February 21, 2012 is set aside and the Tenancy shall continue.

The Tenant is entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant's application to set aside and cancel the notice to end tenancy for cause is granted.

The Tenant is granted a monetary order for \$50.00.

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: March 07, 2012.

---

Residential Tenancy Branch