



Dispute Resolution Services

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

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and recover the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's evidence. The landlord also presented a witness to testify.

Issue(s) to be Decided

1. Whether the Notice was served upon the tenant and in the form required by the Act.
2. Whether the reasons indicated on the Notice have merit and sufficient to end the tenancy.
3. Award of the filing fee.

Background and Evidence

The tenancy began in 1999 as a one-year fixed term tenancy which then converted to a month-to-month tenancy. On August 20, 2008 the landlord placed the Notice in the tenant's mailbox which the tenant disputed on August 26, 2008. The Notice has an effective date of September 30, 2008 and indicates that the tenancy is ending because 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,
- Put the landlord's property at significant risk.

The landlord testified that she received written and verbal complaints from other tenants at the residential property concerning events that took place on August 17, 2008 including:

1. the tenant's television set being thrown off the tenant's balcony and landing in a common gathering area below;
2. extremely loud screaming and swearing coming from the tenant's unit at about midnight;
3. the tenant leaving pieces of broken glass from the smashed television on the grass until another tenant cleaned up the remainder of it the next day;
4. other loud noises coming from the tenant's unit consistent with objects being thrown around.

The landlord provided three written letters from other tenants. One of the complainants also stated that the tenant's behaviour is aggressive and referred to other incidents in the past.

The tenant testified that she placed the television on the railing of her balcony in order to stain the dresser it normally rested on and that the television accidentally fell off the railing. The tenant explained that the railing is very wide. The tenant denied screaming or that screaming noises came from her or her unit. Rather, the tenant claims to have been sleeping during the time the screaming was heard by the other tenants. The tenant stated that she picked up most of the glass from the broken television but that some glass was strewn about and that another tenant cleaned it up before she had a chance to complete the clean-up. The tenant denied having acting aggressively and claimed incidents in the past were either not overly loud or not coming from her unit.

During the hearing, a witness was called to testify. The witness was absolutely certain that the screaming heard on August 17, 2008 was coming from the tenant's rental unit

and could not possibly come from another unit. The witness also stated that the voice he heard screaming was the voice of the tenant.

During the hearing, a resolution between the parties was attempted; however, a mutual agreement could not be achieved. The landlord did give her consent to extend the effective date until October 31, 2008; however, the landlord clearly stated that the tenancy needs to end to preserve the other tenants' right to quiet enjoyment. The tenant clearly communicated her desire to remain in the rental unit she has called home for nine years. Therefore, it is before me to determine whether the notice is valid and of sufficient merit to end the tenancy.

Analysis

I find that the Notice was served in accordance with the requirements of the Act and that the effective date complies with the Act. Further, the reasons indicated on the Notice are consistent with the provisions of section 47 of the Act.

In making my determination considering the merits of the Notice, I must consider whether the landlord has demonstrated that the tenant's actions violated the Act in a manner described on the Notice, based on a balance of probabilities. A balance of probabilities is not the same as the criminal standard of proof beyond a reasonable doubt. Rather, if I find it more likely than 50% that the event(s) occurred as alleged by the landlord, the landlord has established proof based on a balance of probabilities.

The parties have agreed on one very important fact which is that the tenant's television landed on the common grounds below her rental unit balcony. Even though the parties were in disagreement as to how the television came to be on the ground below, I find the fact that it ended up smashing on the ground below to be, at the very least, a serious disregard for other tenant's safety. I find the actions of the tenant, whether they be throwing the television off the balcony or placing it on the balcony railing which then fell off the balcony, seriously jeopardized the health and safety of other occupants of the

building. My finding is also compounded by the fact that shards of glass remained in the grass below until another tenant did a more thorough job of cleaning it up.

If the incident involving the television were not enough to end the tenancy, I have also considered that testimony and written letters from other occupants concerning loud noises and screaming coming from the tenant's rental unit. Although the tenant denied such events, I find that the preponderance of evidence demonstrates that the other tenants have been unreasonably disturbed by the tenant's behaviour.

I appreciate that the tenant values her nine year tenancy very highly; however, the landlord has an obligation to protect the other tenants' right to quiet enjoyment as well as their safety. I find that the tenant has placed those rights in jeopardy, whether intentionally or unintentionally. However, the landlord does not have to demonstrate that the tenant intentionally disturbed or interfered with another occupant in a significant way or that the tenant intentionally jeopardized the safety of other occupant; rather, the landlord only has to show that the tenant's actions did have that result. I also find that that a reasonable person would have anticipated that placing a television on a balcony railing would be unsafe and the consequences of it falling could be great.

In light of the above, I uphold the Notice with the effect that the tenancy will end. I accept the landlord's verbal consent to extend the effective date to October 31, 2008 in order for the tenant to find other accommodation. If the tenant remains in the rental unit after September 30, 2008, the tenant is required to pay rent for the month of October 2008. The landlord is provided with an Order of Possession effective October 31, 2008.

I make no award to the tenant for recovery of the filing fee.

The tenant's application is dismissed without leave to reapply.

Conclusion

The Notice to End Tenancy is valid and is upheld. The tenant must vacate the rental unit on or before October 31, 2008.

September 24, 2008

Date of Decision
