



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the tenant to cancel a notice to end tenancy for cause, issued on August 28, 2008 with an effective date to end the tenancy of September 30, 2008.

At the hearing, both the tenant and one of the landlords appeared and gave affirmed testimony. I also advised both parties that I would consider both the oral testimony as well as any written evidence that had been submitted, in reaching my decision.

Issues(s) to be Decided

Is the notice to end tenancy for cause as issued by the landlord valid? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy at issue commenced on June 15, 2008 and is for a rental unit on the upper level of a home. The landlords occupy the lower level.

The notice for cause as issued by the landlord cites the following reasons for ending the tenancy:

"Tenant has allowed an unreasonable number of occupants in the unit/site."

"Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- put the landlord's property at significant risk.

At the hearing, the landlord gave evidence that the, unreasonable number" is based upon the tenant's 4 children and an unknown number of guests being in the premises in numerous occasions. The landlord states that many times these guests stay overnight.

The landlord's evidence in regards to being disturbed is based upon noise emanating down from the upper rental unit and causing a disturbance to himself and the other



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landlord. These activities include, running, loud music and yelling at various times during the late evening and in the night hours. The landlord gave some evidence of dates when these events have occurred. The landlord also gave evidence that there is no soundproofing in the construction of the building which would act as a buffer between the rental unit and the landlord's residence area.

In relation to the grounds of property at risk, the landlord had little evidence other than to say there may be potential for damage from some of the suspected activities of the tenant's children.

The tenant at the hearing stated that she has spoken to her children about the noise issue and feels that some of the noise is normal movement that is transmitted clearly due to no soundproofing. The tenant indicated a willingness to deal with the issue, but feels that the landlord should take part in emphasizing the noise problem to her children.

Analysis

I find that there is evidence that there have been some disturbances to the landlord by the activities of the tenants. The landlord has brought some of this to the tenant's attention verbally, but there have been no written warnings of the activities to the tenant. The lack of soundproofing within the rental unit may indeed be part of, but not all of the problem. While there is no legislative requirement for written notification, it is commonly held that such written notice strengthens the applicant's case and also serves to allow

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the tenant some time to correct the behaviour. The tenant would do well to heed such warnings and to take action to correct the objectionable behaviour or the continuation of this tenancy may be tenuous. I do not find that the disturbance as described has been significant or unreasonable, although its continuance could certainly lead to that being proven in the future. I also do not find that the number of person in the premises is unreasonable or that that the landlord's property is at significant risk.

Conclusion

I find the notice to end tenancy for cause as issued by the landlord on August 28, 2008 to be invalid and I order that the tenancy continue. I also order that the tenant may recover the filing fee of \$50.00 for this application. The tenant may deduct the amount of \$50.00 from the rent payable for the month of November 2008.



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Dated: September 26, 2008

Dispute Resolution Officer