



Dispute Resolution Services

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

Decision

Dispute Codes: OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated August 14, 2008 and effective September 30, 2008, 2008. Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted by proving that the tenant or persons permitted on the property by the tenant violated the Act pursuant to section 47 by:
 - significantly interfering with and or unreasonably disturbing other occupants or the landlord or;
 - engaging in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The burden of proof is on the landlord/respondent.

Background and Evidence

Submitted into evidence was a copy of the One-month Notice to End Tenancy dated August 14, 2008, copies of complaints from residents in the complex, a letter of warning

from the landlord to the tenant dated July 11, 2008 indicating that the tenant had violated the tenancy agreement by disturbing other residents, a letter addressed to "Resident", "Apt 223" dated July 12, 2008 advising that a complaint has been made about loud music, a written statement signed by Keely-Ann Strang, a copy of a receipt for purchases made at 0200:52 on August 14, 2008, a typed statement from Judy Rolke discussing an incident that occurred on August 14, 2008 and a copy of the security report for July 13, 2008 indicating that police attended suite 122 regarding the firing of a "bb gun off balcony" of suite 223.

The landlord testified that the tenant had been warned verbally and in writing about disturbing neighbouring residents by playing music with reverberating bass that vibrated into other units. The landlord testified that the landlord personally investigated and witnessed the noise. The landlord testified that after the warnings, there was a noted improvement. However in August an incident occurred that generated complaints and involved police presence. Apparently the firing of "BB guns" off of the tenant's balcony alarmed other residents, entailed police presence and necessitated the intervention of the landlord. The landlord testified that, because of the ongoing problems, a notice to end tenancy for cause was issued ending the tenancy on September 30, 2008.

The tenant testified that the tenant complied with the rules after receiving the initial warning letters. However, on August 14, 2008, after the tenant had left the unit to go to the store, some visitors of the tenant chose to take practice shots off the balcony using air rifles and this was done without the tenant's knowledge or permission. The tenant testified that this was an unfortunate, but isolated, incident that would not recur. The tenant acknowledged that other residents are entitled to the peaceful enjoyment of their suites and should not be disturbed nor bothered by the actions of the tenant or associates of the tenant. The tenant is hopeful of preserving this tenancy and has asked for another chance by being granted an order to cancel the Notice to End Tenancy for Cause.

Analysis

While I accept the landlord's testimony that complaints were made about the noise and that written warnings were issued, I note that the second incident was of a slightly different nature than the earlier conduct and that this was perpetrated by visitors of the tenant, apparently in the tenant's absence. That being said, the tenant is still always responsible under the Act for the conduct of any guests allowed on the premises by the tenant.

In this instance, the landlord received verbal and written complaints from a number of other residents and had to act on these complaints under the Act. There is no doubt that more than one resident has been disturbed and on more than one occasion.

However, in light of the fact that the tenant is now aware that she will be held accountable and has fully accepted that disturbing other residents could place the future of this tenancy in serious jeopardy, I agree, with some reservation, to cancel this notice to end tenancy. I do, however, feel that I must caution the tenant that any excessive noise which disturbs other occupants, or any other disruptive conduct, should this occur in future, would likely be considered a valid basis for the landlord to end this tenancy. .

Conclusion

Based on the above, I grant the tenant's request in the application and hereby order that the One-Month Notice to End Tenancy dated August 14, 2008 be cancelled and of no force nor effect. I find that the tenant is not entitled to be reimbursed the \$50.00 cost of filing for the dispute and dismiss this portion of the tenant's application.

September, 23, 2008
