



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 an application by the tenant pursuant to the *Residential Tenancy Act* for an order to cancel the notice to end tenancy for cause, pursuant to Section 47. The tenancy started on September 01, 2008 and the rent is \$575.00 payable in advance on the first day of each month. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues

Does the landlord have cause to end tenancy? Is the tenant entitled to the recovery of the fee to file this application?

Background and Evidence

The landlord testified that the notice to end tenancy for cause, dated November 29, 2008, was served on the tenant on November 30, 2008 in person, with an effective date of December 31, 2008. The tenant filed an application for dispute resolution on December 05, 2008.

The landlord has cited the following reasons for the notice to end tenancy:

- Tenant has allowed an unreasonable number of occupants in the suite;
- Tenant has significantly interfered with or unreasonably disturbed the landlord;
- Tenant has put the landlord's property at significant risk;
- Tenant has adversely affected the quiet enjoyment, security, safety and physical well being of the landlord.

The landlord stated that the rental unit consists of a bachelor suite located in the lower level of the home and the landlord occupies the upper level of the home. She stated that the tenant has his girlfriend sleeping over several times per week which results in an

unreasonable number of occupants in the bachelor suite. The landlord also stated that on two occasions the girlfriend left the door unlocked, thus creating a safety and security risk to the landlord's property. The landlord stated that the tenant surfs a lot and hence leaves the unit early in the morning to go surfing and returns after midnight. The landlord stated that the tenant slams the doors which results in disturbances to her sleep at these hours. The landlord also admitted that she had not discussed or warned the tenant about this disturbance caused by the slamming of the doors.

The tenant testified that between full time school and a part time job, the tenant is away during the day and can only meet his girlfriend at night. His girlfriend works two jobs during the day and lives in a rental suite at another location. The tenant agreed that she spends several evenings and nights with him, but she makes sure she does not shower or use the laundry facility in the suite. The tenant stated that he spends several nights at his girlfriend's rental unit and has submitted a letter from his girlfriend's landlord to verify that she has rented a suite from October 2008. The tenant stated that he does not play loud music and does not create any disturbances in the suite. He stated that he was not aware that he was disturbing the landlord by slamming the doors and stated that he would make sure that he did not do so in the future.

The tenant stated that when he received the notice to end the tenancy, he approached the landlord to discuss the reasons for the notice and the landlord refused to do so. Hence he was unaware of the fact that he was causing a disturbance when he opened and shut the doors. He also stated that the landlord enters the unit without giving the tenant any notice. The landlord stated that she would enter without notice for the sole purpose of checking whether the tenant disposed of garbage in a timely manner.

Analysis

Based on the sworn testimony of both parties, I find that the tenant has not allowed an unreasonable number of occupants in the unit.

Pursuant to Section 30 of the *Residential Tenancy Act*, a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by the tenant. Pursuant to Section 9 of the *Residential Tenancy*

Regulations, a landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit, must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guest. Therefore, I find that the tenant has not allowed an unreasonable number of occupants, by allowing his girlfriend to visit during the day or at night.

I also find that the tenant has not put the landlord's property at significant risk. Leaving a door unlocked on two occasions does result in a risk to the safety and security of the landlord's property but does not constitute grounds for ending the tenancy. I also find that the landlord did not give the tenant an opportunity to amend his activity of shutting doors in a way that caused noise disturbances to the landlord, by way of a written notice or a verbal discussion. Therefore, based on the oral evidence presented by the landlord, I find that the landlord has not demonstrated that she has sufficient grounds to end the tenancy for unreasonable number of occupants, disturbances to the landlord and putting the landlord's property at risk.

Pursuant to Section 47 of the *Residential Tenancy Act*, I uphold the tenant's application to cancel the notice to end tenancy. The notice is set aside and the tenancy will continue. I also find that the tenant is entitled to recover the cost of filing this application and may withhold \$50.00 from the next month's rent.

Conclusion

The notice to end tenancy for cause is set aside, the tenancy will continue and the tenant is entitled to recover the cost of filing this application.

Dated December 23, 2008.
