



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 tenants to cancel a Notice to End Tenancy for cause and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were given in person to the landlord on July 07, 2009. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave their testimony, were provided the 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(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy for cause can be cancelled?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on February 01, 2008. Rent for this suite is now \$933.30 and is due on or before the last day of each month. The tenants paid a security deposit of \$450.00 on January 09, 2008.

The landlord served the tenants with a Notice to End Tenancy for cause on July 03, 2009. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had 10 days to dispute this notice and they filed their application on July 06, 2009.

The landlords Notice claims that the tenants are repeatedly late paying their rent, they have significantly interfered with or unreasonable disturbed the landlord and they have put the landlords' property at significant risk. The tenants dispute the landlords' allegations. The tenants testify that they were only late paying the rent a couple of time when one tenant had a death in the family and

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had to deal with that. The landlord has requested the tenants pay in cash but due to the tenants working shifts they are not always around on the day the rent is due so it is sometimes paid a day after and left in the laundry room as requested by the landlord. The tenants testify that if the landlord would take post-dated cheques from them then this would not occur and she would have a rent cheque for the first of each month.

The tenants testify that there have been some incidents with noise in which the landlord has had cause to complain. Both tenants work until late at night and often go out after work. When they come home they try to keep the noise down but it seems that even moderate conversations wake the landlord. There was an incident with the tenants using the washing machine late at night but they were unaware that this was not allowed. Since the landlord posted a rules notice in the laundry room they have refrained from doing laundry late at night. The tenant's dispute the landlords claims that when her sister was staying they kept her awake at night. One tenant explains that she was talking quietly on her cell phone; her caller could not hear her so she raised her voice. The landlords' sister came down and started knocking on the door yelling at them to keep the noise down and did they know what time it was. The tenants feel they can not carry on normal life as the landlord continually makes them feel uncomfortable in their own home and is confrontational and disrespectful of their rights as tenants. The tenants and landlord agrees that the incidents with noise have reduced in the last few months.

The tenants also dispute the landlords claim that they smoke in the property and therefore have put the property at significant risk. One tenant testifies that she does not smoke at all and the other tenant only smokes off the property due to the wishes of the non-smoking tenant. They testify that they do have friends around who do smoke and they request that they also smoke off the property. The tenants dispute that they have every smoked in the bathroom and if the landlord has heard the fan coming on at night it is because they are using the bathroom and not smoking.

The tenants state that they would like to stay at the rental property until the end of the year and create a civil relationship with the landlord. They don't expect the landlord to dictate to them how they should live their lives.

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The landlord testifies that the tenants have been excessively noisy on occasions and kept her awake two to three times a week. Her written submissions confirm that in the last few months the tenants have kept the noise down. The landlord testifies that she does not like to accept rent cheques as she has had previous tenants who have paid in this way and the cheques have not cleared resulting in additional bank charges. The landlord testifies she has repeatedly asked the tenants to put any cigarette butts in a plastic bag and then in the garbage bin due to her allergies. She claims that she has smelt smoke coming from the tenants bathroom through the vents and has seen them smoking outside the unit. The landlord claims the tenants are disrespectful of her right to quiet enjoyment of her home.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Based on the inconsistency between the tenants' evidence and the evidence of the landlord, I find that the tenants have presented a clear case as to why the Notice to End Tenancy can be cancelled.

I find that the tenants have on occasion caused some noise when they have returned home late at night which has woken the landlord, However by the landlords own admission in the last few months this noise has been significantly reduced. A landlord does have a right to quiet enjoyment in her own home but I find that in homes where the basement is rented out unless appropriate sound proofing is in place, normal noise will travel from one unit to the other. The tenants have stated that they can not carry out normal conversations in their unit and can also hear the landlord having conversations and hear the landlords' television from their unit. This leads me to believe there is insufficient sound proofing between the units.

I further find that the tenants have made every effort to pay their rent on time but this is complicated by the landlords' wishes to accept cheques only. The tenants have not been excessively late with their rent and have followed the landlords' wishes to leave the cash payments in the laundry area. I believe the tenant's testimony that the landlord issues them with a receipt for these rent payments after she has received them.



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I prefer the evidence of the tenants as to the issue raised by the landlord about the tenants smoking on the property. If the tenants choose to smoke in the street then the landlord has no recourse for action against them. If however the tenants or their guests are smoking inside the property then the landlord must provide sufficient proof to support this claim. In any event the landlord is unable to support her claim that the tenants are putting the landlords' property at significant risk.

Given the above, as there is insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated July 03, 2009, it is cancelled and the tenancy will continue.

As the tenants have been successful in this matter, they are entitled to recover the \$50.00 filing fee from the landlord and I Order that they withhold this amount from their next rent payment.

Conclusion

I find in favour of the tenants application to cancel the Notice to End Tenancy and the tenancy will continue.

I further Order the tenants to deduct **\$50.00** from their next rent payment to the landlord to recover the filing fee paid for this application.

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: September 14, 2009.

Dispute Resolution Officer