

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy and for a monetary order to recover the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on March 01, 2008. The rental unit is located adjacent to the residence of the landlord. On August 07, 2009, the landlord served the tenant with a one-month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant was repeatedly late on rent, has allowed an unreasonable number of occupants in the unit, has significantly interfered with or unreasonably disturbed the landlord, has caused damage to the landlord's property and has adversely affected the quiet enjoyment, security, safety or physical well-being of the landlord.

The landlord testified that the tenant broke the glass on two windows and has not fixed it despite repeated reminders, has not maintained the lawn as per the tenancy agreement, has removed window screens and strewn them on the back yard, causes noise disturbances in the early hours of the morning, uses a noisy air conditioner which causes the landlord sleepless nights and has several people living inside the unit who are not named on the tenancy agreement. The landlord did not file any evidence to support his allegations.

The tenant denied having extra occupants in the home, stated that he would fix the broken glass and denied causing noise disturbances. He also stated that he needed his air conditioner in hot weather and found it unreasonable that the landlord should cite this as a reason for eviction.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant was repeatedly late paying rent, has allowed an unreasonable number of occupants in the unit, has significantly interfered with or unreasonably disturbed another occupant, has caused damage to the landlord's property, has breached a term of the tenancy agreement and has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

Both parties offered conflicting testimony. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord did not file any evidence to support the reasons for the notice to end tenancy and therefore I find that the landlord has not proven his case. I accept that the tenant caused damage to the property but I am not satisfied that this action alone which the tenant agreed to, justifies bringing this tenancy to an end.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated August 07, 2009. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from causing disturbances and having extra

occupants in the rental unit. I find it timely to put the tenants on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may recover his filing fee of \$50.00 from next month's rent.

Dated September 25, 2009.

Dispute Resolution Officer