

DECISION

Dispute Codes: CNC and FF

Introduction

This application was brought by the tenants seeking to have set aside a Notice to End Tenancy for cause dated September 27, 2009. The tenants also sought to recover the filing fee for this proceeding.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served after he had received a number of complaints from other tenants in the rental building concerning a late night party.

The landlord stated that he had had previous complaints about noise from the subject rent unit, but the latest incident had been sufficiently serious to warrant to the Notice to End.

Both the landlord and a neighbouring tenant gave uncontested evidence that the tenants had thrown a loud party which the neighbour said was going full tilt when he got home from work at 2:30 a.m. and which continued to 3:30 a.m. The tenant offered that things had settled down by the time police arrived at 6 a.m.

The neighbouring tenant said he had complaints about the subject tenants in the past but they had more to do with early morning noise, an annoyance that has abated.

The tenant submitted into evidence a copy of a notice he had sent to the other tenants advising them of the party, inviting their attendance and welcoming their call if they found the noise too loud. The tenant said he had subsequently apologized to all but one of the other tenants who had not been home on a number of his attempts to speak to her. He agreed to offer her apology in writing.

Analysis

In view of the fact that none of the earlier complaints to the landlord were sufficiently serious to warrant a warning letter, in view of the tenants' efforts to forewarn and obtain the consent of other tenants, and in recognition the apologies and promise to avoid future disturbances, I find that the Notice to End Tenancy should be set aside.

Conclusion

While the notice is set aside and the tenancy continues, the tenants are cautioned that the Notice to End Tenancy may be referred to in a future hearing on similar circumstances if one should arise.

As the conduct of the tenants justified the Notice to End Tenancy and necessitated the present hearing, the tenants remain responsible for their own filing fee.