



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. One of the two tenants, a witness for the tenants and an agent for the landlord all participated in the teleconference hearing.

Issues(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on October 1, 2009. On December 15, 2009 the landlord served the tenant with a notice to end tenancy for cause. The reasons cited on the notice for ending the tenancy were as follows: the tenant has (a) significantly interfered with or unreasonably disturbed another occupant or the landlord, and (b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The evidence of the landlord regarding the reasons for ending the tenancy was as follows. The landlord received written and verbal complaints from other tenants regarding noise from the tenant's rental unit. The landlord personally served the tenant with a first warning letter on October 20, 2009. On December 3, 2009, the landlord served the tenant with a second warning letter by posting it on the door of the rental unit. On December 13, 2009 there was loud music coming from the tenant's unit, and the police and fire departments were called. The tenant did not answer the door when

the police knocked, and when members of the police and fire department entered the unit via the balcony, nobody was home. The police turned the stereo off. On December 15, 2009 the landlord served the notice to end tenancy for cause on the tenant. In the hearing, the landlord acknowledged that they did not investigate the noise complaints but did send the warning letters and issue the notice to end tenancy based on the complaints they received.

The two written complaint letters were both sent by a tenant residing directly above the rental unit in question. The first complaint letter, dated October 18, 2009, addressed three dates, October 7, 13 and 14, 2009, where the upstairs tenant heard loud arguments and yelling from the unit below, all occurring in the late evening. The complaining tenant also raised concerns about the tenant below being a possible drug user. The upstairs tenant's second complaint letter, dated December 14, 2009, regarded the noise incident of December 13, 2009.

The tenant's response was as follows. The tenant stated that he never received either of the landlord's warning letters. The landlord has not provided any evidence to support the alleged verbal complaints of other tenants. In regard to the incident of December 13, 2009, the tenant stated that there was a power outage, so he left the rental unit, and the loud music came from his computer when the power came back on. The tenant further stated that the opinions of the upstairs tenant about whether the tenant was a drug user were only her opinions and should not be considered. On January 3, 2010, the tenant spoke with the upstairs tenant, and they came to an understanding with each other. Finally, the noises that the upstairs tenant or other tenants heard may have come from another unit. The night before the date of this hearing, there was an incident involving a tenant across the hall and the police, and that tenant may have been responsible for some of the noise that other tenants heard on previous occasions.

The witness for the tenant was the upstairs tenant. She agreed that on December 13, 2009 her power also went out and as a result her computer got "fried." She stated that she had spoken with the tenant on January 3, 2010, and the tenant wanted to assure

her that he would not make further noise. She replied that the matter was out of her hands, and it was now between the landlord and the tenant to resolve. The upstairs tenant did not change her position regarding her previous noise complaints, and she did not want any further complaints she may make to be disregarded.

Analysis

In regard to the second alleged cause for ending the tenancy, I find that the landlord did not provide any evidence, other than the opinion of the upstairs tenant that the tenant was a possibly a drug user, that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In regard to the first alleged cause, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, I find as follows. In considering all of the evidence, I do find it more likely than not that the tenant caused unreasonable noise as detailed in the upstairs tenant's first written complaint. I accept the evidence of the upstairs tenant that the tenant spoke to her on January 3, 2010, he wished to assure her that there would be no further noise problems. The tenant therefore appeared to be acknowledging, at least to the upstairs tenant, that he had been causing unreasonable noise.

In regard to the incident of December 13, 2009, I accept the evidence of the tenant that there was a power outage, as supported by the testimony of the upstairs tenant. However, there is insufficient evidence for me to determine whether the loud music in the rental unit came from the tenant's stereo or his computer. Moreover, there is insufficient evidence for me to determine whether the tenant could or ought to have taken steps to prevent loud music from coming on when power was restored.

In regard to the warning letters of the landlord, I find that the landlord did not provide sufficient evidence to prove that the warning letters were served on the tenant. A landlord is not required to serve warning letters before issuing a notice to end tenancy,

but the landlord should investigate complaints and satisfy themselves that the complaints are valid. A landlord's investigation of a complaint may include notifying the tenant of the allegation and giving the tenant an opportunity to respond. In this case, the landlord did not investigate the complaints they received. I therefore find that the landlord has failed to provide sufficient evidence regarding the first alleged cause, that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The notice to end tenancy dated December 15, 2009 is therefore not valid.

Given my finding that the tenant did cause unreasonable noise that disturbed the upstairs tenant, and the tenant is now aware of the landlord's warning letters, the tenant therefore may consider this decision his final warning regarding causing unreasonable disturbances. If a further incident arises, the landlord may serve the tenant with a new notice to end tenancy for causing an unreasonable disturbance.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

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: January 15, 2010.

Dispute Resolution Officer