

DECISION

Dispute Codes:

CNC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing and to provide affirmed oral testimony.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on January 29, 2010 be cancelled?

Background and Evidence

This tenancy commenced on year ago; the tenant, his spouse and their 7 year old daughter reside in this apartment that is on the 3rd floor of a wood frame building.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenants were required to vacate the rental unit on February 28, 2010. The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

Neither party submitted evidence outside of the copy of the Notice provided by the tenant.

The landlord testified that the tenant has not engaged in illegal activities.

The landlord stated that on September 10 and November 23, 2009 the tenants were given verbal notice that they were disturbing the tenant who resides below them. The tenants also caused a disturbance as the result of a fight or argument on January 28, 2010, which resulted in the downstairs tenant complaining. The downstairs tenant is the occupant in a unit that is not managed by the landlord.

The tenant confirmed that there have been some complaints of noise and that they have made efforts to be quiet. The tenant explained that his daughter can be rambunctious and that the floors are older wood, which will creak when you walk on them.

The landlord issued the Notice after the report of a disturbance made on January 28, 2010.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I considered the testimony that there have been three reports of complaints made since September 2009 and that these complaints have not been accompanied by any indication that further problems could result in the end of the tenancy.

I base this decision on the absence of evidence that the complaints have been fully investigated as to their veracity. I also find that some of the reports may be the result of the sounds of normal day to day living and that the nature of the building may not be conducive to protecting neighbours from the sounds emanating other units.

The parties agreed that the landlord will investigate any further reports of disturbances, that the tenants will make efforts to ensure that they do not disturb others and that the tenants will be provided with a written notice of any valid reports of unreasonable disturbance made by other tenants.

Conclusion

As I have determined that the landlord's have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(2)(d)(i) of the Act, I hereby set aside the One Month Notice to End Tenancy, dated January 29, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

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: March 19, 2010.

Dispute Resolution Officer