

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for cause.

The tenant served the landlord by in person on February 03, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenant confirmed receipt of the landlords' evidence package on March 11, 2010.

The landlord and the agent for the tenant appeared. Both Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on November 26, 2009. The tenancy was originally for the tenant and the tenants' agent who is his mother. The tenants' agent has since moved from the rental unit. This is a month to month tenancy and rent is \$750.00 per month due on the first of each month. The tenant paid a security deposit of \$375.00 and a pet damage deposit of \$375.00 on November 26 or 27, 2009.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on January 31, 2010. The reasons given on this notice are:

- a) the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord
- b) seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- c) put the landlord's property at significant risk.

The landlord claims the tenant has disturbed other tenants with loud noise including cars pulling up outside the tenants' balcony, running their engines and talking to the tenant on his balcony, and playing loud music from the rental unit.

The landlord also claims the tenant or his guests have put card or paper in the lock of the back door to prevent it locking when shut so non residents can access the tenants unit from this door. The landlord also claims a non resident was seen entering the building through the front door with a key which the tenant must have provided.

The landlord claims she has kept track of the cars and visitors to the building throughout January 2010 and these movements have been so excessive she has passed the information over to the Police. The landlord claims that other tenants have made complaints to her about the tenants actions and two tenants have since left the rental unit as they no longer wish to live there because they are afraid.

The landlord has provided two letters from other tenants; one states that the tenant is giving notice because she no longer feels the building is safe or is conducive for a young family. The other letter states: that the tenant is giving notice as she is going travelling and the building no longer feels safe due to the traffic in and out for the last few months.

The tenants' agent testifies that the back door is common area and all the tenants use this entrance. The tenants' agent agrees that they did have visitors to their unit while she was living there but they have communicated with their neighbouring tenants and have kept the noise down after he told them he had been disturbed on one occasion only.

The tenant claims that neither she nor her son has ever received a letter about noise complaints from the landlord. The tenants' agent states that she has spoken to other tenants who have moved and they have moved for personal reasons not because they are afraid of the

tenant. The tenants' agent states the landlord has hired a Security Company and have now installed security cameras at the building so the building should now be secure.

The tenants' agent states that the reasons given on the landlords Notice to End Tenancy are untrue and her son has never put the landlords' property at risk or disturbed other tenants.

The landlord requests an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. I find the landlord has not provided any witnesses to the disturbances that she claims were caused by the tenant or any evidence to support her claim that the tenant left the door unsecure to allow his guests to enter the back door. Therefore, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for the reasons given on the One Month Notice and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated January 31, 2010 is cancelled and the tenancy will continue.

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 18, 2010.

Dispute Resolution Officer