

DECISION

Dispute Codes CNL, MNDC, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end the tenancy; for an order requiring the landlord to comply with the *Residential Tenancy Act (Act)*; and for compensation for damages or loss under the *Act*.

The hearing was conducted via teleconference and was attended by the landlord, the tenant and two witnesses.

Prior to the hearing both parties submitted documentary evidence; the tenant submitted three packages and the landlord submitted one package. Two of the tenant's packages and the landlord's package were received within 5 days of the hearing and as such cannot be considered in this decision. The participants were informed at the start of the hearing.

During the hearing the tenant indicated that she is planning to move out of the rental unit at the end of March 2010. The parties agreed that the tenant would amend her application to exclude the issue of cancelling the notice to end tenancy and the landlord would be issued an order of possession for March 31, 2010.

As the tenant is moving out of the rental unit within a short period of time the tenant also agreed that there was little value in pursuing her request for an order to have the landlord comply with the *Act*, as such the tenant's application was further amended to exclude this issue.

Issues(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order for compensation for damages or loss under the *Act*, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on March 23, 1999 as a month to month tenancy for a current monthly rent of \$705.00 due on the 1st of the month, plus utilities.

The tenant submitted the following documentary evidence:

- Several separate documents that all include various summaries of events;
- A note from the tenant to the landlord dated December 13, 2009 complaining of loud music and noise and marijuana smoke coming from the upstairs rental unit, noting that the police have "marked" this address due to the violence and drugs from past tenants;

- A notice to the upstairs tenant from the basement tenant advising the tenant that if he continues with loud music and parties and constant pot smoking that the upstairs tenant should expect an eviction notice. The tenant indicated on this document that she had served this to the upstairs tenant;
- A note from the tenant to the landlord dated January 14, 2009 complaining about access to the driveway being restricted by the upper tenant, drum playing in the upper rental unit and the upper tenant's dog running loose;

The tenant testified that the tenants had moved in upstairs in November 2009 and ever since then there have been constant parties, loud music and marijuana smoking. The tenant stated that she had complained to the landlord on many occasions and that the landlord reported back that he had spoken to the tenant and everything would change but nothing ever did.

The tenant's witness provided testimony that the tenant had told her of many occasions when there had been partying going on upstairs at night and there was often a heavy smell of marijuana. The witness also stated that she had been chased by the upstairs tenant's dog off of the property back to her car.

The landlord testified that the upstairs tenant worked 6 days a week and that he was often not even in the upstairs unit, but that he had spoken to him after the downstairs tenant had complained.

The landlord's witness confirmed that on one occasion he attended the residential property with the landlord to investigate the tenant's complaint that she could smell marijuana in her unit. This witness stated she checked the tenant's unit but could not smell any marijuana and they then went up to speak to the upstairs tenant who confirmed that he had smoked a joint.

The tenant's daughter provided testimony that the tenant upstairs has a rock band that parties every couple of days. She stated that there are usually 4 or 5 guys there at least until midnight. She also testified that the upstairs tenant's dog attacked her cat and as a result the cat suffered a bad infection but is doing well now.

The landlord read into evidence a notarized letter from a former upstairs tenant indicating that the downstairs tenant was a major reason that she had left the residential property in June 2007. She noted the tenant played her music during the day very loud; ran the washer and dryer from 8 a.m. until evening and daily the smell of marijuana came into her rental unit.

The tenant testified the former tenant was coerced into written this but provided no evidence supporting this statement.

Analysis

While the preponderance of evidence is disputed verbal testimony some of the documentary evidence provided provides some clarity to the circumstances. In her testimony the tenant confirmed that she has been living in this rental unit for 11 years.

In her note dated December 13, 2009 to the landlord she states "I contacted rcmp and they did tell me to call them if it continues, and that the landlord should be doing check for grow ops. The house is marked because of all the drugs and violence from past tenants."

From this evidence and testimony provided, the tenant has failed to show that the behavior exhibited by the current upper tenant is different than the behavior of any past tenants that she has found acceptable for 11 years.

The letter read into evidence by the landlord indicates this tenant has been responsible for similar behavior in relation to another tenant that she is alleging the current upper tenant has exhibited. I accept the reading in of this letter as the tenant acknowledged that she was aware of the letter.

While Section 28 states that a tenant is entitled to quiet enjoyment during a tenancy, the tenant herself has a role to play in ensuring that right. As the tenant provided no evidence to support her claim that the letter written by a previous tenant was coerced and in light of her statement that these conditions have existed long before the current upstairs tenant moved in, I find the tenant is not entitled to any compensation.

Conclusion

Based on my findings above, I dismiss the tenant's application in its entirety, without leave to reapply.

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 24, 2010.

Dispute Resolution Officer