

Decision

Dispute Codes:

CNC, FF

Introduction

This is the Tenant's application to cancel a Notice to End Tenancy for Cause; and to recover the cost of the filing fee from the Landlord.

Both parties attended at the Hearing and gave affirmed testimony.

Issues to be Decided

- Should the Notice to End Tenancy for Cause issued February 17, 2010, be cancelled?

Background and Evidence

The Landlord's agent gave the following testimony:

The Landlord seeks to end the tenancy for the following reasons:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord's agent testified that the Landlord had received three noise complaints about the Tenant from another tenant in the building. The Landlord's agent stated that on each occasion, the Tenant had been given written warnings.

The Landlord's agent stated that the Tenant had another occupant living in her suite and that it was a breach of a material term of the tenancy agreement because she lived in a bachelor suite. The Landlord's agent submitted that two occupants in a bachelor suite was an unreasonable number. The Landlord's agent testified that no discussions had taken place with the Tenant with respect to the additional occupant and that the Tenant had not been provided with written notice with respect to the additional occupant.

The Tenant gave the following testimony:

The Tenant testified that at the time of the noise occurrences, she was convalescing at home with a shoulder injury and on pain medication. She stated that she has written a letter of apology to the other tenant and has been careful to be considerate and aware of his right to quiet enjoyment since receiving the warnings.

The Tenant testified that the other Tenant has accepted her apology. The Tenant provided a copy of a letter from the other tenant in evidence.

Analysis

A copy of the tenancy agreement was entered in evidence, which includes the following sentence:

“If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy.”

The Landlord's agent testified that there were no discussions with the tenant with respect to an additional occupant. The Landlord's agent stated that no written notice was provided to the Tenant, and therefore I find that the Landlord has failed to prove cause to evict the Tenant on these grounds.

The second cause alleged by the Landlord was with respect to noise complaints from one other tenant, which occurred on January 18, 2010, January 26, 2010, and February 2, 2010. The Tenant provided a copy of her letter of apology to the other tenant, dated

March 19, 2010, along with a copy of a letter from the other tenant, dated March 21, 2010. In this letter, the other tenant states that there have been no further noise disturbances from the Tenant.

Based on the Tenant's testimony and documentary evidence, I find that the Tenant did disturb the other tenant on three occasions, but has not disturbed him since the incident on February 2, 2010. Furthermore, the other tenant has accepted her apology.

Therefore, I find that there is not sufficient cause to end the tenancy due to unreasonable disturbance. However, the Tenant is warned that any future noise violation may result in the Landlord issuing another Notice to End Tenancy.

The Notice to End Tenancy issued February 17, 2010, is therefore cancelled. The tenancy remains in full force and effect.

I order that the Tenant bear the cost of filing the application, and dismiss her application to recover the cost of the filing fee from the Landlord.

Conclusion

The Notice to End Tenancy for Cause issued February 17, 2010 is cancelled. The Tenancy remains in full force and effect.

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.

April 21, 2010

Date of Decision
