



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 for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy for cause.

The tenant served the landlord in person on June 11, 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.

Both parties appeared along with an advocate for the tenant. They all 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 One Month Notice to End Tenancy?

Background and Evidence

This tenancy started as a fixed term tenancy on February 02, 1998. Since that time it has reverted to a month to month tenancy. Rent for this one bedroom unit is \$850.00 and is due on the first of each month. The tenant paid a security deposit of \$312.50 on February 02, 1998.

The landlords' agent testifies that she gave the tenant a One Month Notice to End Tenancy for Cause due to the following reasons:

- 1) The tenant has allowed an unreasonable number of occupants in the unit.

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- 2) the tenant or a person permitted on the property by the tenant has;
 - a) significantly interfered with or unreasonable disturbed another occupant or the landlord
 - b) seriously jeopardized the health, safety or lawful right of another occupant or the landlord
 - c) put the landlords property at significant risk

The landlord has provided four breach letters dated January, September, November, 2009 and January, 2010 concerning the tenants eldest daughter and her boyfriend living in the rental unit. The landlord states this is a one bedroom unit with a small den and the only occupants allowed to live in the unit are the tenant, her youngest daughter and her two grandchildren. The landlords' agent states the tenant has removed these two additional occupants from her home after she was served each breach letter but they always come back.

The landlords agent testifies she has given the tenant four breach letters concerning noise in her unit on January, April, June, 2009 and May, 2010. The landlords' agent states she has received complaints from other tenants about the noise of children screaming late at night and running and shouting in the corridors and lobby of the building. The tenants' eldest daughter and her boyfriend would also have loud arguments in the unit and play loud music.

The landlords' agent testifies that the tenants unit is extremely overcrowded with people and belongings. She states the tenant was sent a breach letter concerning the condition of her unit on February 19, 2010. The landlord claims this causes a health hazard as the building has a problem with bedbugs, cockroaches and rodents and this is made worse due to the amount of stuff in the unit so effective treatments cannot be carried out to eradicate the problems. This in turn may affect the other tenants. The landlords' agent has included a breach letter she states was sent to the tenant concerning health and safety.

The landlords agent testifies that when the fire alarm company came to do their annual checks they commented to her about the high level of belongings in the tenants unit and how this could

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be a potential fire hazard. She also states they commented that the door to the balcony is blocked which could also be a risk as it is a fire exit.

The landlord requests an Order of Possession for the end of August, 2010 to enable the tenant to get a larger rental unit to accommodate everyone living with her.

The landlord has sent the following supporting documents, copies of breach letters, and copies of reports from companies dealing with infestations, One month Notice, photographs of the tenants unit, complaint letters from other tenants.

The tenant disputes the landlords' claims. The tenant testifies that she has custody of her grandchildren and they and her youngest daughter live in the unit with her. The children's mother and her boyfriend (who is one of the children's father) do come to visit their children and collect them for day care in the morning and bring them, home at night. The tenant testifies that these two persons do not live with her in her unit. She states the children do make normal children noise and have woken up in the night crying when they were younger as children do. The tenant states this is not an adult only building and other children do live there. She also states her grandchildren do run down the corridor but do not make unreasonable noise. The tenant testifies that she has strict rules in her home about noise and fighting and does not allow that to take place when she is there. The tenant states she has now taken her eldest daughters key away so she cannot enter the unit if the tenant is not home to prevent further incidents of noise from them. The tenant states her grandchildren are older now and do not wake up at night. When they are awake she has activities to keep them amused and she enforces bedtimes for them.

The tenant states the whole building has a problem with bedbugs, roaches and mice and this is not isolated to her unit. When the landlords' agent took photographs of her unit this was when she had prepared her unit for treatment and that is why the photographs show it looking a mess. The tenant states if her room had not been prepared the companies would not have treated it. The tenant has provided photographs of her unit showing it to be clean and tidy after the treatments took place.

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The tenant states she was present when the fire officers inspected her alarms and at no time did they mention that her unit was a fire risk.

The tenant states she has never received any breach letters from the landlords' agent and had no knowledge of them until she received them in the landlord's evidence for this hearing. She also states she was unaware of any noise complaints against her from her neighbours.

The tenants advocate testifies that she attempted to settle this dispute with the landlords' agent but she informed her that the landlords wished to proceed with the hearing. The advocate states the tenants' eldest daughter is now aware that she must not come to the tenants' home when the tenant is not there and that due to her actions the tenant and her children could lose their home. The tenants advocate questions the landlords' agent and asks if she has any complaints about noise from the tenants unit as she lives across the hall from her. The landlord agent states she has heard excessive noise from the children and the tenants' eldest daughter when the tenant is not at home to enforce the rules.

The tenants advocate states that now the tenant is aware of the noise complaints from her eldest daughters visits she will only be allowed supervised access to her unit and her children to prevent these occurrences in the future.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the first reason given on the Notice; the landlord argues that the tenant has allowed her eldest daughter and her boyfriend to live at the rental unit. The tenant disputes this and states they only come to visit. I find the landlords agent has provided no evidence to support her claim that these other adults have been living at the rental unit she has based her claim on hearsay rather than fact. It would not be unreasonable that parents of children come to visit them frequently, spend time with their children or take them to day care on a daily basis.

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With regard to the landlords second reason on the Notice; I find although the landlords agent has provided letters from some other tenants concerning complaints about high noise levels the tenant has taken action to prevent these occurring in the future. The landlord has testified that the tenant was served four breach letters about noise but the tenant has disputed ever receiving a breach letter. When landlords evidence is contradicted by the tenant or when it is one persons word against that of another the burden of proof falls on the person making the claim. In this case the landlords' agent claims the tenant did receive the breach letters. The landlord would need to provide corroborating evidence to satisfy me that the tenant did receive these letters. In the absence of any corroborating evidence, I find there is no evidence to support the landlords agents claims that the tenant did receive the letters and I find she was therefore unaware that her grandchildren and eldest daughter were making excessive noise.

With regard to the third reason given on the Notice; the tenants advocate testifies that the whole building suffered with infestations of bedbugs, roaches and rodents and therefore the tenant is also a victim in this matter and took all the required steps to help eradicate this problem. I also find the landlords photographic evidence to be misleading as these photographs were taken at the time of upheaval when the tenant was preparing her unit for treatment.

With regard to the forth reason given on the notice; I find the landlord has presented no evidence to support their claim that the tenants unit is a fire hazard or a risk for other tenants living in the building. The landlord has provided no documentation from the fire officers present at the inspection and they are again relaying on hearsay.

Consequently it is my decision that reasons given on the one Month Notice to End Tenancy are not significant or have not been proven and the Notice is therefore cancelled and the tenancy may continue.

The landlords' agent concerns about overcrowding in the tenants unit have been duly noted. However as the landlord has agreed that four persons may reside in the one bedroom unit this is not sufficient reason to end the tenancy



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Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated June 03, 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: August 17, 2010.

Dispute Resolution Officer