



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant - CNC, FF

For the landlord – OPC, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks to cancel the One Month Notice to End Tenancy and to recover her filing fee. The landlord seeks an Order of Possession for cause and to recover the filing fee.

First of all it is my decision that I will not deal with the issue of the security deposit that the landlord has put on the application as the tenant is still in residence and the landlord has not yet carried out a move out condition inspection and I find that this section of his application is premature.

I therefore dismiss this section of the landlords' dispute with liberty to re-apply.

The landlord served the tenant by registered mail with a copy of the Application and Notice of Hearing. The tenant served the landlord in person with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, 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:



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Issues(s) to be Decided

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

Is the landlord entitled to an Order of Possession based on the Notice to End Tenancy?

Background and Evidence

Both Parties agree that this tenancy started on September 01, 2009. This was a fixed term tenancy which was due to expire on August 31, 2010. The tenant has paid rent for September, 2010 and the tenancy now continues on a month to month basis. Rent for this unit is \$945.00 per month and is due on the first of each month. The tenant paid a security deposit of \$472.50 on August 27, 2009.

The landlord testifies that the tenant was served a warning letter concerning noise from her rental unit and with her children running up and down the hallways. A second and final warning letter was given to the tenant on April 09, 2010 concerning similar issues where the tenant or her children have disturbed other occupants of the building. This was followed up with a One Month Notice to End Tenancy for cause on July 21, 2010 when the tenant failed to respond to the warning letters.

The reason given on the one Month Notice is that the tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonable disturbed another occupant or the landlord. The landlord states the tenants children run back and forth in the hallways, doors are slammed, the tenant forgets her keys and yells up to her balcony to be let in to the building or disturbs other tenants by pressing their bells to be let in; the tenant or persons permitted in her unit shout profanities from her balcony to people on the ground, The tenant has had loud parties at her rental unit with people coming and going late at night. Another tenant has written compliant letters concerning the tenants' actions or her family or guests because they throw cigarette ends from their balcony which collect under her window and have split drinks down the wall which come into her open windows.

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The tenant disputes the landlords' claims she states her children have run in the hallways when she takes them with her to the laundry room. She has since explained to them that they must not do this and they now behave when in the hallways. The tenant claims she does not smoke but her guests may smoke on the balcony and she has provided them with a can for their cigarette ends. She claims there was one occasion when she did lose her keys and she had to call up to be let into her unit and she claims there was an occasion when her children did spill drinks down the outside wall. The tenant states she has not disturbed other tenants by ringing their bells to be let into the building.

The tenant claims that the party mentioned in the warning letter was not at her unit but was held at her neighbour's unit who have since moved from the building. She also claims that there has only been one occasion when someone has shouted profanities from her balcony and on this occasion the Police were called.

The tenant states she has five year old twin sons and a seven year old son who all share a bedroom and they go to bed by seven in the evening. She states there are times she has trouble getting them to sleep and they can get noisy. The tenant feels she is being picked on and every time anything happens in the building she gets blamed for it.

When questioned the landlords leasing agent was unable to corroborate that the party was at the tenant's unit as she had not seen this herself.

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. The landlord has provided the warning letters sent to the tenant and two complaint letters from another tenant concerning the disturbances. However, the landlord has not provided sufficient



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corroborating evidence to show that these disturbances are continuous or that they are all the fault of the tenant her children or her guests. The leasing agents testimony does not confirm that she has seen a party going on at the tenants unit as stated in one of the warning letters or that the cigarette ends are thrown from the tenants' balcony. The landlord has provided no witness to attest to the tenants' alleged disturbances. Consequently, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

As the landlord has been unsuccessful he must bear the cost of filing his own application.

If further disturbances occur the landlord is at liberty to serve the tenant with another Notice to End Tenancy.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated July 20, 2010 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding pursuant to section 72(1) of the *Act* and may deduct that amount from her next rent payment when it is due and payable to the landlord.

The landlords application is dismissed.

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: September 21, 2010.

Dispute Resolution Officer