



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for cause.

The issue of evidence served by the landlord upon the tenants was raised by the tenants who have testified that the evidence package was received on September 13, 2010. The Rules of Procedure require that the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicants as soon as possible and at least 5 days before the hearing. In calculating time when it is expressed as "at least," the first and last days must not be counted. I find that the tenants have been served in accordance with the Rules of Procedure, and I accept the evidence provided by the landlord.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Are the tenants entitled to an order cancelling the notice to end tenancy for cause?

Background and Evidence

This month-to-month tenancy began on October 1, 2008, and an additional tenant was added to the tenancy on April 13, 2010. Rent in the amount of \$915.00 is payable in

advance on the 1st day of each month. No security deposit or pet damage deposit was collected by the landlords.

The landlord testified that on July 26, 2010 a 1 Month Notice to End Tenancy for Cause was issued and served personally on the tenants which states that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and has an effective date of vacancy of August 31, 2010. He further testified that the notice was issued due to ongoing complaints of noise, domestic disputes, screaming, yelling and anger coming from the rental unit. Police have been called six times this year, the majority of the calls being due to domestic disputes. He further testified that the landlord has tried to salvage the tenancy on several occasions, however without any success as it relates to the complaints received.

The tenants testified that a daughter, who also resides in the unit, is suffering from post traumatic stress disorder and is difficult to control. As a result, she has an uncontrollable temper. The tenants admit that the noise is disturbing to other tenants and are not able to ensure an improvement in a short period of time. The child has seen a physician who recommended counselling, however the child is not ready or willing to discuss her trauma with counsellors nor with her mother or grandmother.

The landlord has requested an Order of Possession, and has agreed that although it is beyond the effective date in the notice to end tenancy, the Order of Possession should be effective September 30, 2010.

Analysis

The landlord has a responsibility under the *Residential Tenancy Act* to provide quiet enjoyment to other tenants within the rental building. I find in the evidence before me that the landlord has established that the cause listed in the notice to end tenancy is supported by the evidence.

Conclusion

Given the above, I find that the tenants' application to request that the Notice be cancelled is not supported under the *Act* by the facts and must therefore be dismissed.

During the hearing the landlord made a request for an Order of Possession. Under the provisions of section 55 (1) (a), upon the request of a landlord, I must issue an Order of Possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The tenants must be served with the Order of Possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 20, 2010.

Dispute Resolution Officer