



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

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 and to recover the filing fee from the landlords for the cost of this application. The tenants both attended the hearing, and the landlord company was represented by an agent, who also called one witness. The tenants, the landlord's agent and the landlord's witness all gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on their evidence.

All information provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

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

Background and Evidence

This month-to-month tenancy began on July 1, 2008 and the tenants still reside in the rental unit. Rent in the amount of \$1,212.00 per month is currently payable in advance on the 1st day of each month, and was \$1,175.00 per month up until an increase was imposed effective November 1, 2010. There are no rental arrears. The rental unit is an apartment in an apartment complex that also has an office. On June 15, 2008 the tenants paid a security deposit in the amount of \$587.50.

The landlord's agent testified that he took over managing the building last year. He stated there had been numerous occasions of loud parties from this rental unit, and police had to attend on the last occasion. The tenants' teenaged son had a party and another tenant called the police. The landlord's agent was unable to provide a date, but believed it to be in the last week of September.

The landlord's agent testified that a 1 month Notice to End Tenancy for Cause was issued September 27, 2010. That notice was posted to the tenants' door on September 29, 2010 and contained an expected date of vacancy of October 31, 2010. A copy of that notice was not provided in advance of the hearing. The landlord's agent further testified that the notice stated 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." After the notice was issued, the tenants went to the office and apologized. The landlord's agent promised to talk to the owner and the previous manager. He also testified that the previous manager had told him about numerous previous complaints, but he has personally not had any direct complaints about the tenants.

The landlord's witness testified that she had received a call from a tenant on September 27, 2010 about screaming and fighting teenagers the night before. She stated the police had been called but wouldn't do anything about it.

The male tenant testified that the incident was on September 24, 2010, not September 26 or 27. He further testified that there was no party. His son had ended a relationship with his girlfriend, and her friends went to the rental unit. They went inside uninvited, swarmed the teenaged boy, punched him and bloodied his nose. He yelled at them to get out, and the incident spilled out onto the street. The boy phoned his parents, who came home and the uninvited girls scattered. The police gave the tenants' son an opportunity to press charges, but he feared retaliation. The tenant testified that there were 10 or 12 girls who were swearing and also threatened to kill his son.

The tenant further testified that there were no prior notices given or noise complaints either verbally nor written. On October 6, 2010 he went to see the landlord's agent. He stated that had they known about any complaints, the tenant would have dealt with it. The tenant also testified that he made several calls to the landlord on October 4, 5, 7 and 8, but no one would return their calls. When questioned about this being an isolated incident, both tenants replied that it was. They also testified that there are other tenants in the building with teenagers, and they have heard parties and music, and perhaps any complaints received may have been mistaken for their suite.

Analysis

Firstly, in order to uphold a notice to end a tenancy, it would be prudent to provide the Residential Tenancy Branch with a copy. The verbal testimony of the landlord's agent is that the notice was dated September 27, 2010, was posted to the door of the tenants' rental unit on September 29, 2010 and had an expected date of vacancy of October 31, 2010. The *Residential Tenancy Act* states that the document is deemed to be served 3 days after posting it, which would be October 2, 2010. That would require an expected date of vacancy to be November 30, 2010.

Further, I find that the landlord has failed to establish that the tenant or persons permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord. I accept the evidence of the tenants that there have been no complaints brought to their attention about noise or parties. Further, the landlord's agent testified that he has not personally had any direct complaints and relies on information from previous managers. I further accept the evidence of the tenants that the persons causing the disturbance were not permitted on the property by the tenants.

Conclusion

For the reasons set out above, the tenants' application to cancel the notice to end tenancy is hereby allowed. The 1 Month Notice to End Tenancy for Cause is hereby

cancelled. I also order that the tenants be permitted to deduct \$50.00 from a future rental payment for the cost of filing this application.

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: November 15, 2010.

Dispute Resolution Officer