



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on November 17, 2010.

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:

Issues(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on August 15, 2010. A written tenancy agreement is in place and rent for this unit is \$600.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$300.00 on August 18, 2010.

The landlord testifies that he directed his son to serve the tenant with a One Month Notice to End Tenancy because the tenant had adversely affected the quiet enjoyment, security, safety or physical well being of the landlord. This Notice states that the tenant has 10 days to either dispute the Notice or move from the rental unit on November 30, 2010.

The landlord testifies that he was overseas when he received a phone call from his daughter who is living in his house where the tenants' suite is located. His daughter informed him the tenant was making very loud noises what seemed to be a late night party and would not be quiet even through the landlords daughter had asked her to



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlord testifies that he instructed his daughter to call the Police and report it to them. He then instructed his son to serve the tenant with the Notice to End Tenancy the next day.

The landlords' daughter testifies that she was woken by the tenant and her guests at approximately 02.00 am after they had come in. She states the tenant was extremely loud, with loud music, singing and yelling. The landlords' daughter states she waited a while to see if the noise would stop but it escalated and she could hear the tenant singing, yelling and laughing at the top of her lungs. The tenant states she banged on the adjoining wall at around 03.00 am and heard the tenant say to her guest that she was not going to be quiet as it's Saturday night. The landlords' daughter states she then telephoned her father who tried to call the tenant but advised her to call the Police.

The landlords' daughter states the Police arrived and she spoke to the Officer and recapped on the events leading up to her call. The landlords' daughter states the Officer went to speak to the tenant and she continued to shout at him and was swearing. She states she heard the officer tell the tenant that he would give her a ticket if she did not claim down and she heard the tenants' guest also asking the tenant to calm down. She states the Officer told the tenant if she did not clam down he would arrest her. The landlords' daughter taped the tenants' noise and conversation with the Officer on her cell phone and played this recording during the hearing. The landlords' daughter states the officer came back and told her that the tenant was very intoxicated and that if she heard any more noise then she was to call the Police again.

The landlord and his wife both testify that there have been other incidents of noise with the tenant where she has disturbed them and their neighbour. They claim the tenant and her husband who visits' her often have loud arguments and fights. The landlord states he has only told the tenant verbally about her noise and has not given her a written warning. The landlord seeks an Order of Possession to take effect as soon as possible.

The tenant disputes the reason given on the landlords Notice. She states she did come back to her suite late on October 30, 2010 but she only had one guest and it was not a party. She states



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

they did play music on her laptop and were singing along to the music. The tenant states it was the landlords' daughter banging in the tenants door that caused all the noise and they ignored her because she seemed to be in a rage.

The tenant agrees that the Police were called and spoke to her about the noise. She testifies that the officer asked her to turn her music down which she did. She claims the officer did not threaten to give her a ticket or arrest her but did say if they had to come back again they would give her a ticket then. The tenant denies being hostile or swearing at the officer.

The tenant claims the landlord returned on November 08, 2010 and told her to ignore the eviction Notice. She states she told him that he would have to cancel it and on November 12, 2010 the landlord and his wife entered her suite and asked her to write a letter of apology. The tenant claims the landlord has been intimidating toward her and has been banging on her door and there was an incident when she had to call the Police as the landlord was harassing her and barging into her suite without permission.

The tenant claims she has never received either a verbal or written warning about any noise from her suite prior to this Notice and claims when her husband comes over he comes to help her and they do not fight or argue.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and that of the landlords' daughter and wife. Section 47 of the Act allows a landlord to give a tenant a Notice to End Tenancy for cause if the tenant or a person permitted on the property by the tenant has adversely affected the quiet enjoyment, security, safety or physical well being of the landlord. Page two of this Notice informs the tenant that she has 10 days to dispute the Notice by filing an application for Dispute Resolution. Both Parties agree that this Notice was taped to the tenants' door on October 31, 2010. This Notice is deemed to have been served to the tenant three days after posting. Consequently, the tenant had until November 13, 2010 to make an application to cancel the Notice. The tenant did not file her application until November 15, 2010. Page two of this Notice also states if a tenant does not file an application to



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

cancel the Notice within 10 days she is presumed to accept this Notice and must move out of the rental unit.

It is therefore my decision that the tenant has caused disturbances to the landlord and his family and while this one proven disturbance alone may or may not constitute an end to the tenancy the fact remains that the tenant did not file her application to cancel the Notice within the allowable 10 days and has not applied for more time to cancel the Notice on her application pursuant to section 66 of the *Act*. Therefore, I find the tenant is presumed to have accepted the Notice and she must move from the rental unit. However, as the Notice was not deemed to have been served until November 03, 2010 the landlord must give the tenant one clear months Notice pursuant to section 47 (2) of the *Act*. Therefore, the effective date of the Notice has been amended to December 31, 2010 pursuant to section 53 of the *Act* and the tenant must move from the rental unit on or before this date.

Conclusion

The Tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on December 31, 2010. This order must be served on the tenant and may be filed in the Supreme Court 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: December 02, 2010.

Dispute Resolution Officer