



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on November 16, 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 cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this month to month tenancy started on January 01, 2002. Rent for this unit is now \$894.47 and is due on the first of each month. The tenant paid a security deposit of \$362.50 at the start of her tenancy.

The landlords' agent attending testifies that the tenant was served a One Month Notice to End Tenancy for cause. The reasons given on the Notice are 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.

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- seriously jeopardized the health, safety or lawful right of another occupant or the landlord
- put the landlords property at significant risk

The tenant has engaged in an illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlords' agent testifies that she has received numerous complaint letters, verbal complaints and telephone complaints from other tenants concerning the behaviour of this tenants children and their friends. She states other tenants have ended their tenancies because of this tenants children and their friend's behaviour in the building.

The landlords' agent testifies that the tenants' children and their friends ride their skate boards in the hallways while shouting, swearing and screaming and this actions cause's damage to the walls. She states the tenants' children have let fire crackers off from their balcony which could potentially cause a fire as it is a wooden building. The children have also been riding their skate boards on the scaffolding that has been erected on the outside of the building to do repairs. The landlords' agent testifies that she has witnessed this herself and spoken to the children about the dangers. There have also been complaints from the contractors and cleaning staff. She also claims the children have broken the door lock on the door leading to the roof and ride their skate boards on the roof.

The landlord states that last year the tenants' children's friends' caused damage to the basement with graffiti on the walls. The tenants' children cleaned this up but she has now found more graffiti of the same design under the stair wells and in the laundry room.

The landlord requests an Order of Possession to take effect on December 31, 2010 based on the reasons given in the One Month Notice.

The tenant disputes the landlords' claims. She testifies that the two recorded calls into the landlords call centre are vague and do not refer to her children. She claims the restoration company and a neighbour have accused her children of vandalism without any evidence to

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support it. She states the dated letters provided by the landlord in evidence are dated after the landlord gave her the Notice to End Tenancy and suggests these have been solicited from the tenants. She claims the older letters were also solicited by the landlord at that time.

The tenant testifies that her children are normal boisterous children but they do not ride their skate boards in the building, on the roof or on the scaffolding. She states one of her sons competes in skate boarding competitions and practices in the neighbourhood. The tenant claims her children are not responsible for the broken lock on the door to the roof but as children are natural curious they did go up to the roof.

The tenant testifies that her children did not throw fire crackers from the balcony. She states they did have some sparklers and dancing devils at Halloween but these are permitted fireworks under the city bylaws and she was present during the time they used them.

The tenant testifies that her children do occasional fight and shout as all normal children do but never late at night and the police have never been called out to them. The tenant denies that her children are involved in any new graffiti that has occurred. The tenant seeks to cancel the Notice to End Tenancy.

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.

In this matter the landlord has provided letters from other tenants and employees at the building. Some of these letters are signed and dated some are not. None of the letters have been sworn in as evidence. The landlord has also provided a photograph of some graffiti that occurred over a year ago and was removed by the tenants' children but no evidence to show any new graffiti



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has occurred. The landlord has provided no witnesses to give affirmed testimony or to support the letters written and no evidence to show the tenants' children used fire crackers on their balcony, skate boarded on the roof or scaffolding. Therefore, in the absence of any corroborating evidence, 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.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated November 04, 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 and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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 07, 2010.

Dispute Resolution Officer