



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, AAT, LRE, FF

Introduction

This hearing dealt with the tenants' application to cancel a Notice to End Tenancy for Cause; for Orders suspending the landlord's right to enter the rental unit; for Orders to allow access to the rental unit for the tenants' guests; and, recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party with respect to the issues before me.

On a procedural note, the tenants attempted to present oral evidence during the hearing that pertain to repair issues and loss of facilities or services. The tenants had not included these concerns in their application or otherwise indicated they intended to present such oral evidence during this hearing. Accordingly, I refused to consider these other matters and informed the parties that the only issues for me to determine are as indicated on the tenants' application. The tenants are at liberty to raise any other issues not addressed in this decision by making a subsequent application.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause issued December 2, 2010 be upheld or cancelled?
2. Should the landlord's right to enter the rental unit be suspended or have conditions set upon that right?
3. Is it necessary to order the landlord to allow the tenant's guests to access the rental unit?

Background and Evidence

I heard the following undisputed evidence with respect to the tenancy. The tenancy commenced approximately four months ago. The tenants pay rent of \$1,000.00 on the 1st day of every month. Since the tenancy began the tenants have been issued four Notices to End Tenancy with the most recent being a 1 Month Notice to End Tenancy for Cause (the Notice) issued December 2, 2010. The Notice has an effective date of January 30, 2011 and indicates the reason for ending the tenancy is 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.

The landlord submitted that a 1 Month Notice was issued to the tenants on October 25, 2010 and upon a conversation with the tenants the Notice was withdrawn as the tenants agreed to keep the noise down. However, complaints of loud music late at night, partying and banging continued to come in from other tenants in the building with respect to this rental unit. As a result, another 1 Month Notice was issued on December 2, 2010 which the landlord wishes to be upheld. The landlord testified that the tenants' behaviour has not changed despite the warnings and notices given to the tenants as evidenced by the tenants' conduct last weekend. The landlord has a phone message left by the RCMP on December 18, 2010. The RCMP had advised the landlord that they had attended the residential property in the early morning hours in response to a complaint of loud music coming from the rental unit, that the tenants would not answer the door for the RCMP, and the loud music continued until they left approximately 1 hour later. The RCMP also advised that they would be forwarding their observations to the city to pursue a noise bylaw infraction.

The tenants denied being too noisy and attribute the complaints to them being the youngest tenants in the building. The tenants acknowledged they had a small birthday party last weekend and that they did not answer the door for the police. The tenants were of the position they were not required to answer the door to the police and were as they were not being overly loud.

With respect to limiting the landlord's right to enter the rental unit the tenants initially submitted that the manager had entered their unit when the tenant was in the hospital. The tenants changed their testimony to state the manager had put a key in the door when nobody answered the landlord's knock on the door. The tenants are also of the position that the manager was rude to the tenants' guests and told the guests that they could not stay in the rental unit when the tenant was in the hospital and that they had to leave.

The manager testified that she went to the rental unit because she had a new fridge for the tenants. The manager knocked on the door and two unknown males answered the door. The manager denied entering the unit or putting her key in the lock. The manager denied telling the guests to leave the rental unit but acknowledged asking the guests who they were and for a phone number for the tenant. The landlord pointed to a section of the tenancy agreement that deems a guest to be an occupant if the guest stays in the rental unit more than 14 days in a year but explained that in speaking with the guests it was not the landlord's intention to restrict access for guests.

Provided as documentary evidence for this hearing were copies of three 1 Month Notices to End Tenancy for Cause issued August 31, 2010; October 25, 2010 and December 2, 2010. In addition, copies of warning letters dated August 25, 2010 and

December 13, 2010 were provided as evidence. Finally, a complaint letter dated December 16, 2010 was also provided as evidence.

Analysis

Pursuant to section 47 of the Act a landlord may end a tenancy where a tenant, or person permitted on the property by the tenant, unreasonably disturbs or significantly interferes with another tenant or the landlord. A landlord has the obligation to protect the quiet enjoyment of other tenants; thus, where tenants or guests of a particular rental unit are unreasonably disturbing other tenants, the landlord must take reasonable action to remedy the situation.

Upon review of all of the evidence before me, I am satisfied the landlord has warned the tenants that they have disturbed numerous tenants with their noise. I am also satisfied that the tenants have not changed their behaviour for any significant length of time to demonstrate that they are willing to comply with the landlord's warnings to be considerate of the other tenants. Further, I found the tenant's explanation as to why he did not answer the door for the RCMP last weekend to be unreasonable behaviour and indicative of his untoward attitude towards other tenants in the building.

In light of the above, I find that the landlord has established that there are sufficient grounds to end this tenancy and I uphold the Notice. The effective date on the Notice issued December 2, 2010 is automatically changed to read January 31, 2010 in accordance with section 53 of the Act. Therefore, **the tenants, and any other occupants of the rental unit, are required to vacate the rental unit no later than January 31, 2010.**

With respect to the remainder of the tenants' application I find as follows: 1) the disputed verbal testimony did not satisfy me that the manager entered the rental unit when delivering the fridge; and, 2) the disputed verbal testimony did not satisfy me that the landlord has restricted access to the tenants' guests. However, as the parties were informed during the hearing, the section 28 of the Act protects the tenant's right to reasonable privacy and section 30 of the Act precludes a landlord from unreasonably restricting access to a residential property by a person permitted on the property by the tenant. Having heard from both parties, I find it sufficient and appropriate to caution the landlord to ensure the landlord's conduct does not violate the tenants' rights under sections 28 and 30 of the Act.

As I found the tenants largely unsuccessful in this application I make no award for the filing fee.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

The Notice to End Tenancy for Cause has been upheld. The tenancy shall end January 31, 2011 and the tenants must vacate the rental unit by that date.

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 23, 2010.

Residential Tenancy Branch