



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on October 26 the tenants were served with a one month notice to end tenancy for cause (the “Notice”). The Notice alleges that the tenants have significantly interfered with or unreasonably disturbed other occupants and that they have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that other occupants of the building have complained that the tenants have disturbed them. Specifically, the tenant’s two year old daughter runs frequently in the rental unit which disturbs the tenant in the apartment immediately below. Other occupants of the building have claimed that the tenants’ arguments with each other have been disturbing as well as the tenant D.M.’s verbal interactions with her daughter. The landlord testified that occupants in the apartments immediately above and below the rental unit moved out citing the noise from the rental unit as the reason for leaving. The landlord provided written statements from those former occupants. The occupants of the apartment immediately above the rental unit also complained that the tenants would frequently the 2 year old child as late as

10:00 p.m. and that the child's laughing and singing kept them awake. The landlord testified that the current occupant of the apartment immediately below the rental unit complains of noise on almost a daily basis. The landlord G.S. testified that on occasion he has heard the tenant's music or television from the elevator and can personally attest that the music is excessively loud. The landlord further stated that another occupant, when passing by the building with her young child, was offended when the tenant D.M. called from her balcony and threatened to report her as being a bad mother.

The tenants denied playing music or the television loudly apart from just a few occasions and testified that they have received very few verbal warnings and just one written warning. The tenants argued that the child in the unit makes no more noise than would be expected of any child of her age and specifically denied having bathed her late in the evening. The tenants insisted that the child's bedtime is between 7:00 and 8:00 p.m. each evening. The tenants stated that the current occupant of the apartment immediately below the rental unit is hypersensitive to noise and that she has somewhat of a vendetta against them as they have complained about her marijuana use and had on another occasion telephoned the police to address an extreme disturbance apparently caused by that occupant. D.M. acknowledged that she called from her balcony to another occupant but testified that the other occupant was speaking in an inappropriate and psychologically damaging manner to her young child and that she felt she had to intervene.

Analysis

The landlord bears the burden of proving that there are grounds to end the tenancy. I am satisfied that there have been numerous complaints made about the noise made by tenants but am troubled that the tenants deny having been advised of complaints made prior to the time the current occupant of the apartment below the unit began her tenancy. While previous occupants may have complained and even provided a letter outlining their experience, they were not available at the hearing for cross-examination or to provide further details regarding the frequency of the disturbances and the interactions they personally had with the tenants.

Many of the complaints, from previous and current tenants, seem centred around the activities of the 2 year old, including running and bathing. Occupants of an apartment building in which families are resident must expect some degree of noise transference from other apartments, particularly in an older building. Without the direct testimony of the affected tenants, it is difficult to establish whether the noise complained of falls within what might be considered reasonable considering the age and character of the building. I am satisfied that on occasion the tenants played their music or television loudly, but am not persuaded that this occurred with such frequency or to such a degree that it warrants an ending of the tenancy.

With respect to the unsolicited parenting advice offered by the tenant D.M. to another tenant, the Act is not designed to direct all interactions between tenants. There will be occasions in which parties will make remarks with which the recipient disagrees. While D.M. would be wise to avoid offering unsolicited advice in the future in order to achieve a greater level of peace with her neighbours, I am unable to find that that her comments are sufficiently egregious as to constitute a disturbance as contemplated under the Act.

For these reasons I find that the landlord has failed to prove that there are grounds to end the tenancy and I order that the Notice be set aside and of no force or effect. I note that just because the landlord failed to prove that there are grounds to end the tenancy does not mean that the tenants have not been disturbing other occupants. Should these disturbances continue, the landlord is free to issue another notice to end tenancy and if disputed, provide direct testimony from affected occupants at any further hearing.

Conclusion

The Notice is set aside. As a result, the tenancy will continue.

Dated: December 03, 2010

Dispute Resolution Officer