



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy and for a monetary order to recover the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on June 01, 2010. The rental unit is located in the basement of the home. The landlord lives upstairs. On November 30, 2010, the landlord served the tenant with a one-month notice to end tenancy for cause.

The notice to end tenancy alleges that the tenant has significantly interfered with or unreasonably disturbed the landlord and has adversely affected the quiet enjoyment, security, safety or physical well-being of the landlord.

The landlord testified that the tenant causes noise disturbances by having loud conversations and banging doors after 10 p.m. at night. This disturbs the landlord's sleep which in turn triggers severe migraines. The landlord has missed several days at work due to her migraines and has filed evidence to support this. The landlord also filed a doctor's note confirming her health condition. The landlord stated that she gave the tenant several verbal warnings to stop the noise disturbances. On November 15, 2010, the landlord gave the tenant a written notice to address this issue.

The tenant denied causing noise disturbances and stated that the landlord did not inform him of any problems until he received the note on November 15, 2010. The note invited the tenant to meet with the landlord to discuss the issue. The tenant was out of town from November 17 to November 27. On November 30, the landlord served the tenant with a 30 day notice to end tenancy. The tenant argued that he does not cause any noise disturbances as his young child is also asleep at the time of the alleged noise disturbances.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant, and has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

Both parties offered conflicting testimony. The landlord stated that she gave the tenant verbal warnings and the tenant denies having received verbal warnings. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord did not file any evidence to demonstrate that she had alerted the tenant to the problem prior to the written note on November 15. The tenant did not reside in the unit for the most of the time period between the warning and the notice to end tenancy. Therefore I find that the landlord did not give the tenant an opportunity to correct the alleged problem before serving him with a notice to end tenancy.



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I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated November 30, 2010. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from causing noise disturbances at night. I find it timely to put the tenants on notice that, if such behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may recover his filing fee of \$50.00 from next month's rent.

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: January 07, 2011.

Residential Tenancy Branch