



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an order cancelling a Notice to End Tenancy and a request of the respondent bear the \$50.00 cost of the filing fee that the applicant paid for the application for dispute resolution.

Background and Evidence

On January 29, 2010 the landlord served the tenant with a one month Notice to End Tenancy giving the following reason:

- The tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that:

- They have had numerous complaints about loud screaming and yelling coming from the tenant's rental unit in the middle of the night and early morning.

- The tenants have been warned numerous times about the noise however it is still ongoing.
- Numerous tenants have written complaint letters, which have been supplied for this hearing however the names and signatures of the tenants have been removed, as they did not want their names used, for fear of retaliation.
- In November of 2010 they had a complaint that the female tenant was running up and down the hallways screaming and although she had already gone inside by the time they arrived, the male tenant admitted it had happened and apologized, stating that she just heard that her mother had a heart attack.
- The most recent incident occurred on December 28, 2010 resulting in another complaint, from the tenant in a suite right next door to the respondent suite, and it was this complaint on top of all the previous complaints that precipitated a Notice to End Tenancy.

The applicants therefore ask that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that:

- There were two incidents of late-night screaming coming from their apartment in the late 2009 and early 2010 however the matters were resolved at that time and there have been no complaints since January 2010.
- The landlords claim that they have been given numerous warnings is false, as there have been no further complaints or warnings since early 2010.
- His girlfriend (female tenant) has never run up and down the halls screaming, and he never told the landlord that his girlfriend's mother had a heart attack as she has never had a heart attack.
- They did tell the landlord that his girlfriend's sister had a heart attack however that was in July 2010 and not November 2010, so the landlord's story makes no sense whatsoever.
- There was no screaming coming from their rental unit on December 28, 2010.
- It is his belief that the landlord has something against him, and therefore is fabricating a reason to evict him.

The tenants therefore request that this Notice to End Tenancy be cancelled and that the tenancy continues.

Analysis

The burden of proving the reasons for ending a tenancy lies with the landlord and when it is just the landlord's word against that of the tenant that burden of proof is not met.

In this case the landlord has supplied insufficient evidence to support the claims that this tenant is unreasonably disturbing other tenants.

The landlords included in their evidence package numerous letters of complaint purported to have been written by other tenants in the rental property however none of those letters have been signed or even have the names of the other tenants on them and therefore are of little evidentiary value.

Therefore in this case it is basically just the landlords word against that of the tenant, and therefore it is my decision that the landlord has not met the burden of proving that the tenants are unreasonably disturbing other occupants.

Conclusion

The section 47 Notice to End Tenancy dated December 29, 2010 is hereby cancelled and this tenancy continues. I further order that the tenants may make a, one time, deduction of \$50.00 from future rent payable to the landlords to cover the cost of the filing fee that they paid for their application for dispute resolution.

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 27, 2011.

Residential Tenancy Branch