



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: MT, CNC, FF

Introduction

This hearing dealt with the Tenants' application to be allowed more time to file their application; to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice) and recovery of the filing fee. Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenants served the Landlord with the Notice of Hearing documents, by registered mail sent February 10, 2011.

At the outset of the Hearing, it was determined that the Notice was posted on the Tenants' door on February 1, 2011, at 9:00 p.m. Section 47(4) of the *Residential Tenancy Act* (the "Act") provides that a tenant may dispute a Notice for cause by making an application for dispute resolution within 10 days after receiving the notice. The Tenants have applied to be allowed more time to file their application, however I find that they filed within the time lines allowed by Section 47(4) of the Act. Therefore this portion of the Tenants' application is not required and is dismissed.

Issue to be Decided

Should the Notice issued February 1, 2011, be cancelled?

Background and Evidence

The parties were in agreement to the following facts:

- The rental unit is a townhouse, situated in a row of townhouses. These townhouses are configured in a rectangular shape, with 8 – 10 houses facing each other and 4 – 5 townhouses at each of the ends, also facing each other.
- The Tenants moved into the rental unit in October, 2010.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

Tenant has engaged in illegal activity that has, or is likely to:

- Damage the landlord's property;
- Adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord;
- Jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord's agent PK testified that the Tenants are dealing drugs at the rental unit. In his documentary evidence, he wrote that he spoke to the Tenant's previous landlord, who told him that he had evicted the Tenants for dealing drugs at their previous residence. He stated that he has received complaints from the Tenant's neighbours regarding the sale of drugs from the rental unit.

The Landlord's agent RS testified that he was at the rental property in November of 2010 and saw lots of traffic to and from the rental unit, including "questionable looking people" wearing hoodies. He testified that he and PK witnessed a hooded man going to the Tenants' door, where money was exchanged for a small package. It was about 11:30 in the morning. They were standing about 30 to 50 feet away from the rental unit when they observed this exchange and had an unobstructed view.

The Tenant's agent stated that the only complaint they were aware of was a noise complaint. The caretaker warned them and the issue was immediately resolved. The Tenants are confused as to why they are being accused of dealing in drugs. The Tenant's agent stated that she called the Tenants' previous landlord, who told her that he had never been called by any of the Landlord's agents. There are 4 adults living in the rental unit. There are lots of kids in the rental property. Many people come and go to the rental property. The Tenant's agent believes the Landlord may have confused the rental unit with a neighbouring unit. The Tenant stated that there was lattice work around the rental unit and it would be difficult to distinguish which townhouse the hooded man went to from the street. Furthermore, there is always a van parked outside the rental unit, so the line of vision is obscured from the street. Due to a privacy issued the Tenants had erected plywood in October, 2010, between their house and the neighbouring townhouse, which further obstructs the view of the door from the street. The Tenant's agent denied that there was any illegal activity taking place at the rental unit. She stated that the Tenant's neighbours also have a lot of visitors and that one of them is on a police curfew.

PK testified that he had made the Tenants take down the plywood.

Analysis

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenants are engaging in illegal activity, or that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or put the landlord's property at significant risk. The Landlord's allegations of illegal activity are extremely vague. The Tenant's previous landlord was not produced as a witness, nor did he

provide a written statement. The Landlord did not provide statements from neighbours, or witnesses regarding unreasonable disturbance. There was insufficient evidence that the Tenants had seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or put the Landlord's property at significant risk.

Therefore, I grant the Tenants' application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants have been successful in their application and are entitled to recover the filing fee from the Landlord. The Tenants may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Notice to End Tenancy issued February 1, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants may deduct \$50.00 from future rent due 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: February 28, 2011.
