



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The parties also provided evidence in advance of the hearing, some of which was not received within the time prescribed by the Rules of Procedure, and with the consent of both parties, all evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

This fixed-term tenancy began on January 20, 2011 and expires on April 30, 2011. The tenant still resides in the rental unit. Rent in the amount of \$775.00 per month is payable in advance on the 1st day of each month and the tenant paid a pro-rated amount of rent for the first month of the tenancy. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$385.00. The parties also agree that the agreement at the outset of the tenancy is that at the end of the fixed-term the tenancy would continue on a month-to-month basis.

The landlord testified that shortly after moving into the rental unit, the tenant had a party that commenced about 2:30 a.m. She stated that she spoke to the tenant twice that night stating that a party commencing at 2:30 a.m. was not acceptable, and the last guest left the rental unit at about 4:00 a.m. The parties had another discussion the following day wherein the tenant promised to not do it again.

The landlord further testified that on January 19, 2011 when the tenancy agreement was signed the parties had a discussion wherein the tenant stated she wanted a quiet place to go to after work each evening and the landlord stated that everyone respected peace and quiet within the apartment complex.

The landlord also testified that shortly after the first incident, the tenant had more parties every night for 7 nights in a row in which 13 different men were in her unit in one week. The tenant had asked the landlord for a key to the door-handle lock so that she could allow her guests to stay and they could lock the door behind them if she was not there. The landlord complied by giving the tenant a key which the tenant had copied.

The landlord also testified that she has not had any complaints from other tenants, but the landlord lives on the same floor, and she was disturbed.

The landlord issued a 1 Month Notice to End Tenancy for Cause, a copy of which was provided in advance of the hearing. The notice is dated March 3, 2011 and contains an expected date of vacancy of April 3, 2011. The notice also states that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. The landlord applied to amend the notice, stating that she checked off the wrong box on the notice, and that it ought to have read, "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 tenant consented to the notice being amended.

The tenant testified that 2 weeks after moving into the rental unit she had her first guests, which was the night of February 5, 2011 or the early morning of February 6, 2011. She stated that she had 3 guests, not 6 as stated by the landlord. She further stated that there is nothing in the tenancy agreement that prevents her from having guests. She testified that the landlord knocked on her door and said that they were too loud and asked the tenant to shut down the party. All guests left as soon as their taxi arrived, which was called immediately upon the request of the landlord.

The tenant further testified that the landlord had told her that a neighbour next door and one below her unit had complained to her about the noise and that those tenants had called the owner of the building the following day and complained to him. She stated that she spoke with the man who lives across the hall and the tenant in the unit below hers and neither had any complaints. One of those tenants provided a letter to the tenant, which was provided in advance of the hearing, and confirms that he had not complained to the landlord about noise or any other behaviour.

The tenant also testified that she is a bar tender and keeps late hours. She denied having parties every night for 7 days in a row as testified by the landlord. She stated that she allows her guests to stay overnight after the sky-train is closed. Further, she promised the landlord she would keep the noise level down, not to avoid having guests. She stated that she's careful to keep noise down and on occasion walks guests to the outside door to ensure the noise level is low. The landlord lives on the same floor, and the tenant and her guests have to walk by the landlord's unit.

The tenant pointed out a document included in the landlord's evidence package that states how many, and what gender the tenant's guests are, and the list commences with March 25. Today is March 21, 2011 and the tenant did not reside in the rental unit in March of the previous year.

The tenant also pointed out a letter dated March 4, 2011 from the landlord to the tenant stating that the landlord will be taking possession of the property at the end of the fixed term, which is contrary to the agreement.

The landlord testified in response that the parties agreed at the outset of the tenancy that it would be for a fixed term for 3 months so that if either party did not want to continue with the tenancy, it would end at the end of the 3 months. The tenant disputes that evidence. The landlord further testified that she did not have any other complaints from other tenants, and told the tenant she had.

Analysis

I have examined the tenancy agreement provided by the parties in advance of the hearing. It states, at paragraph 2 of page 1 that the agreement is to begin on the 20th day of January, 2011. It also states in the same paragraph that the agreement is to begin on the 20th day of January, 2011, and end on the 30th day of April, 2011, but is silent with respect to whether or not the tenancy continues on a month-to-month basis or if the tenant is required to vacate the rental unit at the end of the fixed term. Generally, when a tenant is required to vacate a rental unit at the end of a fixed term, the agreement specifies that. The matter before me, however, is whether or not to cancel a notice to end tenancy for cause.

In the circumstances, I find that the landlord was not honest when she told the tenant that she had complaints from other tenants, and the landlord admitted to that in the hearing. I further find that the document provided by the landlord dated March 9, 2011 listing guests, their gender and number of guests on each date is unreliable evidence. I agree with the tenant that the list starts with March 25 with no year, it is not yet March 25, and the tenant did not reside in the rental unit the year prior. I have examined that

document and it states, “You may notice as I did and found very strange that not one female guest entered her premises out of all of her guests,” and, “...due to my chance overhearing a conversation between (the tenant) and one of her departing guests. He was asking what her name was and could he come back again.” It then lists how many male guests were at the rental unit from March 25 to April 3, and then states, ‘ “Enough was enough” twelve male “guests” in one week all carrying bags of alcohol. Notice to End Given.’ Due to those statements in the landlord’s document, I find that the landlord did not make a mistake when completing the notice to end the tenancy. I find that the landlord felt the tenant had engaged in illegal activity.

I also accept the evidence of the tenant that she promised to keep the noise down, but did not promise to avoid having guests in her unit. I also find that the tenant has not disturbed other tenants within the apartment complex, as agreed by the landlord. The landlord’s position is that the landlord was disturbed.

In the circumstances, I find that the landlord was not disturbed by noise, but by her belief that the tenant was engaging in illegal activity, which has not been established. I also find that the landlord has failed to establish 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 did not request an Order of Possession.

Conclusion

For the reasons set out above, the notice to end the tenancy is hereby cancelled.

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: March 22, 2011.

Residential Tenancy Branch