



Dispute Resolution Services

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 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 following facts are not in dispute. The rental unit is on the upper floor of a residence in which the lower floor is occupied by another tenant, F.L., in a separate unit. The tenant has a number of roommates, including M.P. who represented him at the hearing. On February 26 the landlord served on the tenant a one month notice to end tenancy (the "Notice") which alleged that the tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health, safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

The landlord testified that early in the morning of February 19 she received several telephone calls from F.L., the first advising that the tenant and his roommates were making an excessive noise and the second advising that water was leaking into her unit from the rental unit. The landlord testified that she attended at the unit and discovered that there was a pool of water in the ensuite. The landlord claimed that she had been told by F.L. that an occupant of the rental unit stated there had been a water fight.

The landlord further testified that although the tenancy agreement contains a prohibition on smoking in the rental unit or on the residential property, she continues to find cigarette butts outside the rental unit. The landlord asserted that smoking jeopardizes her ability to obtain and maintain house insurance.

The landlord further testified that F.L. has told her that the tenants frequently are excessively noisy and that she is frightened of M.P.

M.P. testified that late in the evening of February 25, he discovered that the toilet in the rental unit had spewed water over the floor. M.P. stated that he shut off the source of the water and cleaned up the water before going to bed. He further stated that he plunged the toilet in case it was plugged but no apparent problem was found. M.P. alleged that there have been problems with plumbing since the tenancy began in late January and that in light of plumbing difficulties which had not been fully resolved, the spontaneous overflow of the toilet was not surprising.

M.P. stated that although some of the occupants of the rental units are smokers, they do not smoke in the rental unit or on the residential property. M.P. testified that he has examined some of the cigarette butts outside the rental unit and noted that they are the same brand as are smoked by a neighbour, which brand is not used by any of the occupants of the rental unit. M.P. further stated that F.L.'s daughter smokes in the alley where the occupants go to smoke.

M.P. denied that the occupants are excessively noisy and further denied that F.L. has cause to be afraid of him.

Analysis

The landlord bears the burden of proving on the balance of probabilities that she has grounds to end the tenancy. I am not satisfied that the cigarette butts discovered by the landlord were placed outside by the tenant or other occupants of the unit as the neighbour or F.L.'s daughter both smoke as well. I find that the landlord has not proven that she is unable to obtain or maintain insurance on her property in the absence of a letter from her insurance company confirming same.

I find that the landlord has not proven that the leak of February 26 was the fault of the tenant or the other occupants of the unit. I do not accept the hearsay testimony offered by the landlord of conversations she had with F.L. as it directly conflicts with the hearsay testimony offered by M.P. regarding his discussions with F.L. I do not accept that the fact that the water on the bathroom floor was clean conclusive determines that the toilet did not overflow. Clean water coming from the toilet tank to fill the toilet bowl could easily overflow the bowl if the regulator malfunctioned.

In the absence of direct testimony from F.L., I find that the landlord has not proven that the tenant and his occupants were excessively noisy or that F.L. is threatened by M.P.

For these reasons I find that the landlord has failed to prove that she has grounds to end the tenancy. I therefore order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

The tenant is entitled to recover the \$50.00 filing fee paid to bring his application and may deduct \$50.00 from future rent owed to the landlord.

Conclusion

The Notice is set aside. The tenant may deduct \$50.00 from a future rental payment.

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 16, 2011

Residential Tenancy Branch