



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on March 09, 2011. The landlord confirmed receipt of the hearing documents and evidence.

Both parties appeared and the tenant was represented by a legal representative. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Should the One Month Notice to End Tenancy for cause be cancelled?

Background and Evidence

Both parties agree that they are unsure when the tenancy started but believe it to be around August, 2003. Rent for this unit is \$240.40 per month and is due on the 1st day of each month. This is a month to month tenancy.

The landlords' agent testifies that he served the tenant with a One Month Notice to End Tenancy for cause as she or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. This Notice was served to the tenant on February 25, 2011 and has an effective date of March 31, 2011. The tenant disputed the Notice on March 07, 2011.

The landlords' agent testifies that he has received complaints verbally from other tenants concerning late night noise and partying from this tenants unit. The landlords' agent testifies that he lives in the unit above the tenant and has been woken up at 02.00 a.m. by loud music from the tenants' unit. The landlords' agent testifies that on six separate occasions he has had to go to the tenants unit and ask her to turn the music down. He states she will turn it down at the time but this is becoming an ongoing issue. The landlords' agent testifies that the tenant is often intoxicated and does not remember him coming to her unit.

The landlords' agent testifies that he has not given the tenant a breach letter on any of the other occasions when he has had to address complaints about her and states that the incident on February 24, 2011 was the final one and he then served her with the Notice to end her tenancy. The landlords' agent states he has not documented the dates and times he has had to visit the tenant concerning noise from her unit. The landlords' agent disputes the tenants' letter sent in evidence signed by other tenants in the building who states they have not been disturbed by noise from the tenants unit. He states that these tenants live on another floor and at the back of the building so would not be disturbed by loud noise from this tenants unit.

The tenants' representative testifies that the tenant disputes the landlords' allegations and disputes that he has spoken to her six times about noise issues. She states the tenant has only been approached by the landlords' agent on one occasion which was on February 24, 2011. The next day the tenant received the Notice to end her tenancy. The tenants' representative states she asked the landlord to substantiate his claims by providing more specific information about noise occurrences or complaints from other tenants but he has only provided two letters without the requested details.

The tenants representative states the landlord has not demonstrated how and when the tenant has caused disturbances and did not provided the tenant with any prior breach letters so she could modify any noise from her unit. The tenants' representative states the tenant asked other tenants living in the building to sign a letter stating if they had been disturbed by the tenant. The tenants' representative states one of these tenants' lives next door to the tenant and one tenant lives just along the hall, not all on the other side of the building or on another floor as suggested by the landlords agent.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 25, 2011 is cancelled and the tenancy will continue.

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 21, 2011.

Residential Tenancy Branch