



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: CNC, FF

Introduction

This Hearing dealt with the Tenants' 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 personally served the Landlord's agent with the Notice of Hearing documents on February 21, 2011, with a witness present.

At the outset of the Hearing, it was determined that the Tenants received the Notice on February 11, 2011. Neither party provided a copy of the Notice in evidence, so I took testimony from the parties with respect for the alleged cause and allowed the Landlord to fax in a copy of the Notice. The fax arrived after the Hearing was concluded, along with 3 more pages of documentary evidence from the Landlord. These three pages were not provided in accordance with the rules for exchange of evidence and therefore was not considered in reaching my Decision.

Issue to be Decided

Should the Notice issued February 11, 2011, be cancelled?

Background and Evidence

The parties were in agreement to the following facts:

- The Tenants moved into the rental unit in April, 1998.
- On February 2, 2011, the Tenants received a warning letter from the Landlord with respect to a noise complaint from their neighbours above them.

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; and
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

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

- Adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord.

(emphasis added)

The Landlord's agent testified that the Tenants were warned in the letter about making too much noise (loud music played at all hours). She stated that the upon receipt of the letter, the Tenant's son went to talk with the upstairs neighbours after receiving the Landlord's warning letter. She stated that the Tenant's son forced the neighbour's door open, causing a bruise on the neighbour's arm. The Landlord's agent testified that the neighbour sent her a picture of the bruise.

The Tenants denied that their son forced the neighbour's door open. They testified that the neighbour initially opened the door and when she saw it was the Tenant, she slammed the door in their son's face. The neighbours called the police, who came and interviewed the Tenants and decided there was no basis to file charges.

The Tenants testified that the upstairs neighbours were upset because they thought the Tenant's cat was digging in their flower bed and using it as a toilet. They testified that the neighbours had threatened to harm the cat.

The Tenants testified that they had lived in the rental unit for 12 years, but the neighbours just moved in November, 2010. The Tenants testified that their other

neighbours have never complained about noise. The Tenants provided written statements from two other neighbours in evidence.

The Tenants testified that their ceiling was leaking and the Landlord has not repaired a hole that was cut to repair the leak. There is no insulation between the floors anymore. The Tenants testified that they believe the upstairs neighbours might be hearing sounds louder than they normally would because of the hole in the ceiling.

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.

The Landlord did not provide a copy of the photograph of the bruise to the neighbour's are, or any supporting evidence that the Tenant's son caused any bruising to the neighbour's arm. The police attended and found no reasons to initiate charges against the Tenant's son.

One of the written statements provided by the Tenant indicates that the writer has lived beside the Tenants for 10 years and has "never been bothered due to them being too loud." The other written statement indicates that the writer lives next to the Tenants, and that she has "never had noise disturbance coming from their place."

The Landlord did not dispute that there is a large hole in the ceiling in the rental unit. The photograph shows no insulation in the ceiling. It is quite likely that sound from the Tenant's home would travel more effectively through a hole in the ceiling than if the ceiling were repaired.

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 or seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. The Tenants' application to cancel the Notice is granted. 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 11, 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: March 07, 2011.
