



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes ET

Introduction

This hearing dealt with an application by the landlord for an order ending this tenancy early. Both parties participated in the hearing.

The hearing had originally been set for March 10, 2011 and took place via telephone conference call. Only the landlord participated in the hearing on that date. The tenant successfully reviewed the decision arising from the March 10 hearing and a new hearing was ordered. The decision and order dated March 10, 2011 were suspended until a new hearing had taken place. I now order that the March 10 decision and order be set aside and of no force or effect.

Issue to be Decided

Does the landlord have grounds to end this tenancy early?

Background and Evidence

The landlord testified that over the past several years, he has received between 10 and 20 complaints about noise and disturbances produced by the tenant and his guests. The landlord provided letters from 4 parties, one of whom appears to reside in a neighbouring building and 3 of whom reside in the same building.

The occupant of the suite immediately beside the rental unit, J.B., wrote a letter and alleged that the tenant is excessively noisy, speaking with guests throughout the night and occasionally having arguments. She also complained that the tenant had an excessive number of occupants in the unit. Another occupant of the building, K.R., complained that the tenant has had loud late night visitors more than 300 times, he has threatened and stolen from other tenants, allowed a “hooker” to live with him for 18 months and that he used hard drugs. At the hearing the landlord testified that the tenant does not smoke, drink or use drugs.

Another occupant, J.H., wrote that he has been awoken in the early hours of the morning on hundreds of occasions by the tenant's noise. G.S. lives in a different building and made further complaints.

The landlord testified that the police have contacted him and told him to evict the tenant. The landlord asked to enter into evidence a letter from the city which he had received the day before the hearing and which the tenant had not yet seen. I determined that the prejudice to the tenant was too great and I did not allow this evidence.

The tenant denied having made excessive noise and described the walls of the building as "paper thin." He noted that the complainants were not present to be cross-examined. The tenant testified that he currently has a peace bond against K.R. and that K.R. has written obscenities around his door frame. The landlord acknowledged that K.R. had written the offensive remarks.

Analysis

Usually when a landlord wishes to end a tenancy for these reasons, he serves a notice to end tenancy on the tenant which takes effect at the end of the following calendar month. The landlord referred to a notice to end tenancy, but as I advised him at the hearing, the type of application he made is not requesting an order of possession based on the service of a notice to end tenancy. The landlord applied for an order ending this tenancy early and bears the burden of proving not only that he has cause to end the tenancy, but that it would be unreasonable or unfair to make him wait for a 30 day notice to end tenancy to take effect.

The landlord clearly has received complaints about the tenant. However, the complainants were not at the hearing and were unable to give specifics about their complaints or make themselves subject to cross-examination. The tenant explained that noise is easily transferred in this building and without questioning the complainants further, I am unable to find that the noise made by the tenant or his guests can be characterized as unreasonable.

While there may have been a number of police incidents, I was provided with no details of those events and at least one appears to have taken place as a result of another occupant assaulting the tenant.

I find that the landlord has not proven that he has grounds to end the tenancy and accordingly I dismiss his application.

Conclusion

The application is dismissed.

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: April 13, 2011

Residential Tenancy Branch