



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated June 29, 2011, for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenants’ application for compensation (for moving expenses) is related in some ways to their application to cancel a Notice to End Tenancy, however, for reasons set out below, I find that it is premature and therefore it is dismissed with leave to reapply.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on May 15, 2011 and expires on May 14, 2012. Rent was \$900.00 per month at the beginning of the tenancy but was reduced to \$850.00 as of July 1, 2011 because the Tenants did not wish to use the laundry facilities on the rental property. The rental unit is a 2 bedroom basement suite. The Landlords live on the upper floor of the rental property. The Landlords’ living room and kitchen are situated above the master bedroom of the rental unit.

The Tenants said they were aware that the Landlords had 3 young children and 2 dogs but claimed that one of the Landlords (H.L.) advised them prior to entering the tenancy agreement that the floor between their suites was well insulated so that there would be no noise (which the Landlords denied). The Tenants said they later discovered that there was no insulation between the upper suite floor and ceiling of the rental unit. The Tenants also claim that the Landlords did not advise them until a week after they moved in that the Landlords operated a day care in their home 4 days of the week. The Tenants claim that the noise coming from the Landlords’ suite was unbearable and that they advised the Landlords about this a couple of times shortly after they moved in.

The Landlords said they purchased the rental property in April 2011 and were unaware of a lack of insulation between theirs and the Tenants' living units but took measures to try to reduce any noise when the Tenants complained. The Tenants claim that they spoke to the Landlords about the noise in an attempt to resolve the matter. The Landlords claimed that on a couple of occasions, the Tenants banged loudly on the floor to get their attention about noise which they believed was rude. On May 20, 2011, the Landlords gave the Tenants a letter advising them that they could terminate their lease at the end of that month if they wished to do so.

On the evening of July 25, 2011, the Tenants said they believed the Landlords were not home so they turned up their music. The Tenants said shortly after, the Landlord, C.L., banged on their door and told them to turn the music off because it was too loud. The Tenants claim that they apologized to C.L. however he became confrontational with them and began asking them about children he had seen visiting and demanded to know how many people were living there. The Tenants said they and C.L. were then startled by the sound of loud footsteps walking across the floor upstairs and heard the Landlord H.L. open the patio door and ask if everything was okay. The Tenants said C.L. then left. The Landlord, C.L., claimed that one of the Tenants (R.W.) was rude to him when he asked him to turn down his music. The Landlord said R.W. started yelling loudly at him so he told the Tenants if they were not happy living there they could leave.

On the morning of July 27, 2011 the Landlords sent one of the Tenants an e-mail advising her that they wished to enter the rental unit the following day to inspect the furnace. The Landlords said they also spoke to the Tenants later in the day and they confirmed that it would be alright. The Landlord, H.L. said that when she arrived at the rental unit on July 28, 2011 no one answered the door so she entered with a service person. After 15 minutes, the Landlord said the Tenants' daughter came out of her bedroom and was surprised to find her (the Landlord) there. The Landlord said she left and returned to her suite and shortly thereafter the Tenants returned home.

The Landlord, H.L., said she could hear the Tenant, R.W., yelling loudly at her from the patio below. The Landlord said R.W. told her that they had left her a message cancelling the appointment, accused her of breaking in and frightening their daughter and threatened to call the police. The Landlord said there were 4 children who overheard this exchange and they began to cry. The Landlord said she felt threatened by R.W. and asked her husband to come home from work. The Landlord admitted that she later found a telephone message from the Tenants asking to reschedule the appointment. The Tenants claim that they initially told the Landlord that one of them would be there and never told the Landlords they could enter the suite without one of them there. The Tenants also claimed that the Landlords could have contacted them by telephone but did not do so. The Tenants further claimed that the Landlord, H.L., went into the rental unit earlier than she had proposed because when they returned home at the originally scheduled time, H.L. had already left.

The Landlords gave the Tenants a warning letter dated June 28, 2011 advising them that their tenancy would be terminated if there were any further incidences. The Landlords also asked the Tenants to sign a proposed amendment to the tenancy agreement that day to change their smoking area from their back patio to the front of the rental property for a rent reduction of \$5.00 per month. On June 28, 2011, the Parties signed a Mutual Agreement to End the Tenancy effective September 30, 2011. Tenants gave the Landlords a letter dated June 29, 2011 advising them that they required 24 hours written notice of any further entries and that they did not wish to move their smoking area.

The Tenant (R.W.) said he had been working into the early hours of the morning and his sleep had been disturbed for the previous 3 days by the noise made by the Landlords and their children in the early hours of the morning. The Tenants said on June 28, 2011 they were disturbed by the sound of heavy footsteps from the Landlords and their guests and loud talking and laughing. The Tenant (S.S.) said out of frustration, she threw a shoe at the ceiling to get the Landlord's attention. The following day the Landlords served the Tenants with the One Month Notice to End Tenancy for Cause dated June 29, 2011. The Tenants argued that the Landlords' real motive for ending the tenancy was because they refused to move their smoking area.

Analysis

In this matter, the Landlords have 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 Landlords' evidence is contradicted by the Tenants, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In this case, there is little dispute about the incidences in question although the Parties' memories of some specific facts differed. The Parties agree that there was noise from the upstairs unit that disturbed the Tenants. The Landlords argued that the noise they made was normal but that they took what steps they could to minimize the sound in the lower suite however the Tenants acted unreasonably and threateningly. The Tenants argued that they have had to put up with an unreasonable amount of noise from the Landlords and that the Landlords are now seeking to end the tenancy because they have complained about it.

I find that there is **no** evidence that the Tenants have jeopardized the health, safety or lawful right of the Landlords. I also find that there is no evidence that the Tenants have significantly interfered with the Landlords. I find that the Tenants did disturb the Landlords by complaining about the noise levels and I also find that the Tenant, R.W. probably did yell at each of the Landlords on two separate occasions. While this conduct may not have been an ideal response to the Landlords' conduct, I find that it

was not without provocation. In particular, I find that the Landlords have little insight into the effect the loud and constant noise disturbances were having on the Tenants despite the Tenants' frequent protests. In particular, the Landlords' response to those complaints was that the Tenants could leave if they were unhappy about it.

I also find that the Landlords did not have the Tenants' permission to enter the rental unit on July 28, 2011 without one of them being present. While this may have been a misunderstanding on the Landlords' part, I find that it contributed to the deterioration of the relationship between these parties. I further find that the Landlords request to change the terms of the tenancy by moving the Tenants' smoking area at this time created even more difficulties because that specific issue had already been addressed and negotiated at the beginning of the tenancy.

Consequently, I find that the Landlords cannot now seek to end the tenancy because they do not want to deal with the reasonable complaints by their Tenants over issues they have caused or largely contributed to. As a result, I find that there are no grounds for the One Month Notice to End Tenancy for Cause dated June 29, 2011 and it is cancelled. As the Tenants have been successful in this matter, there are entitled pursuant to s. 72(1) of the Act to recover the \$50.00 filing fee they paid for this proceeding. I order pursuant to s. 72(2) of the Act that the Tenants may deduct this amount from the September 2011 rent payment when it is due and payable. If the tenancy ends on an earlier date, the Tenants may request the Dispute Resolution Officer to issue a Monetary Order in that amount.

Conclusion

The Tenants' application for compensation is dismissed with leave to reapply. The balance of the Tenants' application is granted. 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: July 27, 2011.

Residential Tenancy Branch