



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This conference call hearing was convened in response to the tenant's application for a cancellation of a Notice to End Tenancy for cause, and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions. No evidence was presented concerning a Notice to End Tenancy, and the tenant has moved out of the unit; therefore the tenant's application for cancellation of a Notice to End Tenancy is dismissed.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of the basement suite of a home where a family with children occupy the upper level.

Pursuant to a written agreement, the month to month tenancy started on September 1st, 2009. The rent was \$750.00 per month and the tenant paid a security deposit of \$325.00.

In her documentary evidence, the tenant provided a statement describing incidents of fighting between the upstairs tenants that the tenant states occur regularly. The tenant identified the dates of June 14th, 2010, June 29th, 2011, July 6th and 7th, 2011 where police were called, July 10th, July 13th, and July 18th, 2011. In that same statement, the tenant declares having informed the landlord on January 12th, February 10th, March 10th, March 25th, April 20th, May 19th, June 2nd, June 8th, June 24th, and June 29th, 2011.

The tenant testified that the upstairs tenants fought constantly, banging walls, screaming and swearing, and used the laundry after 7:00PM well into the night. The tenant said that the upstairs tenants threatened her on July 6th over the use of the backyard and that she called the police. She said that the landlord did nothing except telling her to stay away. She said that the landlord gave the upstairs tenants notice to end tenancy, but that they did not leave. The tenant said that she was stressed to the point of having to take medicine.

The landlord testified that the problems with the upstairs tenants did not start until April or May 2011, and that she recalls three or four conversations with the tenant. The landlord stated that she did speak with the upstairs tenants, and discovered a different version in that the downstairs tenant was antagonizing them; and told her that the tenant's boyfriend threatened them. She said that after hearing both sides, she had trouble finding blame solely on the upstairs tenants; she stated that the applicant tenant had similar problems in her previous tenancy, and that there were no problems with the upstairs tenants until the applicant tenant moved in. The landlord stated that she did not issue a notice to end tenancy; but clarified rather that she warned them with a notice if the problem continued, and that the applicant tenant gave her notice to end tenancy the next day. Concerning the use of the laundry facilities, the landlord stated that there were no terms of requirements concerning their use in the tenancy agreement.

Analysis

Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment including, but not limited to; reasonable privacy and freedom from unreasonable disturbance. The tenant bears the burden of proving that the landlord failed to respond in a reasonable and timely fashion when apprised of the tenant's complaints. The tenant did not dispute the landlord's testimony and I am not persuaded that the problem in this tenancy was never at no fault of the applicant tenant's actions, or her co-tenant's. If these incidents were so egregious and taxing on the tenant, the evidence would have been more convincing had the tenant made an application for dispute resolution when they occurred.

I accept on the evidence that the landlord was aware of the problem, and that she did take reasonable steps by approaching the upstairs tenants in an attempt to determine the nature of the problem; that she concluded both tenants were quarrelling; and that before she could decide on an appropriate response the applicant tenant gave her notice to end the tenancy. The tenant identified four specific incidents in her statement,

where at least three of which occurred after the tenant gave her notice to end the tenancy. While I accept that the applicant tenant was temporarily inconvenienced, such discomfort as described in the circumstances of this dispute does not necessarily constitute a breach of the covenant of quiet enjoyment. As to the police attendance, the tenant stated that they were called, however I have no evidence before me on what they saw or reported, with the exception of the landlord's testimony that no further enforcement action was taken.

For the above noted reasons I find insufficient evidence that the landlord breached the covenant of quiet enjoyment.

Conclusion

The tenant's 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: October 25, 2011.

Residential Tenancy Branch