



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OLC, ERP, RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants seeking more time to cancel a Notice to End Tenancy. The tenants have also applied to cancel the Notice to End Tenancy. The tenants seek an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, to make emergency repairs for health or safety reasons and to make repairs to the unit, site or property.

The tenants served the landlords with a copy of the Application and Notice of Hearing in person on September 08, 2011. The landlord confirmed receipt of this package. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlords' agents and the tenants appeared. Both 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.

Preliminary issues

The tenants have applied for more time to file an application to cancel the notice to end tenancy. As the tenant filed their application within the time frame allowed they do not require more time and this section of their application is dismissed.

RTB Rules of Procedure 2.3 states that "if in the course of a 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.” In this regard I find the tenants have applied for an order for the landlord to comply with the Act, to make emergency repairs and to make repairs to the unit. As these sections are unrelated to the main issue which is to cancel the One Month Notice to End Tenancy I find it appropriate to dismiss these sections of the tenants claim.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on February 01, 2011. Rent for this unit is \$825.00 per month which is due on the 1st day of each month.

The landlord testifies the tenants were served with the first One Month Notice to End Tenancy for cause on July 12, 2011. This notice had an effective date of August 31, 2011. The landlord testifies the tenants came to her and asked if they could work something out to avoid being evicted. The landlord testifies she agreed to withdraw the Notice if the tenants stopped making noise and agreed to a trail tenancy of three months. A new tenancy agreement was put into place on September 01, 2011 signed by the parties which also contained a clause that the landlords would take further action against the tenants if any more noise complaints came in from other tenants.

The landlord testifies that they continued to get noise complaints concerning the tenants fighting and arguing, loud music and dog barking. One compliant from another tenant concerned the tenants’ dog barking to music. The landlord testifies they ignored the first complaint letter as there was a history between these tenants and the tenant making the complaint but they received a total of five written complaint letters concerning disturbances coming from these tenants. The landlord testifies that on occasion the noise has been so loud she has received a complaint from a tenant living in another building further down the street. The landlord has provided copies of warning letters sent to the tenants concerning noise at their unit.

The landlord testifies a colleague was showing a prospective tenant one of the units when one of these sisters came out and started cursing and swearing at her colleague, telling the prospective tenant not to rent from them. She states the tenant then threw a mouse trap in their direction.

The landlord testifies that she now has other tenants threatening to move out if she does not take action against these tenants. In light of the agreement signed by the tenants and the new complaints against them the landlord served the tenants with another One Month Notice to End Tenancy on September 12, 2011. This Notice has an effective date of October 31, 2011 and gave the following two reasons to end the tenancy:

- 1) the tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

The landlord requests that the one month Notice to End Tenancy dated September 12, 2011 is upheld and requests an Order of Possession for October 31, 2011.

The tenant's testify that the landlord served them with a notice to move out within 24 hours after a complaint against them came in. The tenants agree that they have been noisy and as they are sisters they do argue a lot. They agree they have also been served two separate One Month Notices. However, they state they are attempting to reduce these arguments with one sister undergoing counselling for her argumentative nature and they have removed their stereo from the home. The tenant recall the incident with their dog barking to music and testify that a neighbour's little girl was at their unit singing along to a popular song and their dog howled along to the music. The tenants state this lasted two minutes and was at five in the afternoon.

The tenants do not dispute an incident took place where she was angry at the landlords agent when he was showing a new tenant around and threw a mouse trap because she states she was frustrated with the landlord for not dealing with the mice problems in their unit. The tenant states she did later apologise to this tenant.

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 landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I find the tenants agree they have caused noise disturbances to other tenants and although they must be commended for trying to work through these problems with counseling and the removal of their stereo the fact remains that the disturbances have continued despite warning letters from the landlord and despite entering into a new agreement on September 01, 2011 in which they knew the landlord would be taking this action against them if further noise disturbances took place.

Consequently, I find the landlord has established reasonable cause to end the tenancy. The Notice will be upheld and an Order of Possession has been issued to the landlord.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause dated September 12, 2011 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective October 31, 2011. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 05, 2011.

Residential Tenancy Branch