



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a cancellation of a Notice to End Tenancy; to suspend or set conditions on the landlord's right to enter the rental unit; and to recover the filing fees associated with this application.

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.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Should the landlord be ordered conditions on his right to access the rental unit?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the upper level of a duplex. Pursuant to a written agreement, the month to month tenancy started on December 1st, 2010. The rent is \$600.00 per month and according to the agreement, the tenants have until December 5th, 2011 to pay the security deposit of \$300.00.

The landlord provided a copy of the 1 Month Notice to End Tenancy. The notice states that the tenants are repeatedly late paying rent; the tenants significantly interfered with or unreasonable disturbed another tenant or the landlord; and the security or pet damage deposit was not paid as required under the tenancy agreement. The landlord provided copies of three receipts of late rent payments dated August 5th, 2011, July 8th, 2011, and September 2nd, 2011, and stated that they have only been on time October and November 2011. He stated that the tenants have significantly interfered with the downstairs' tenant's right to quiet enjoyment through noise and violent disputes.

The landlord testified that he gave the tenants 6 months to pay the security deposit, despite the date on the agreement. He said that the tenants changed the lock to the common area shared with the downstairs tenant without his consent.

The tenant testified that the landlord's motive to end the tenancy is questionable; she did not dispute being late paying rent however she stated that the notice was motivated by their refusal to pay a rent increase that does not comply with the Act. She stated that they changed the lock to the common area out of fear that the downstairs tenant would break into their suite, that they gave a key of the new lock to the landlord, and that the landlord agreed. The tenant also alleged that the downstairs tenant has a personal vendetta to see them evicted, that she wants to take over the whole unit, and that the incidents reported are lies.

The landlord's witness testified that she is a working, 54 year old adult with no intent to break into the tenants' suite. She said that she only went to the common area 4 times. She said that she cannot afford to rent the whole unit and has no intentions to do so. She stated that she heard several disturbances that keep her awake at night when the tenants fight, and that she called the police on October 10th and November 1st, 2011. During the witness testimony, the tenant interrupted the proceedings by calling the witness a liar and using foul language. The tenant had to be warned to cease interrupting. The witness continued on, stating that she has personal vendetta, and that

she has had previous conversations with the tenant about her boyfriend's violent tendencies.

The tenant argued that the police calls were not justified, and that one incident was caused by her boyfriend tripping over an electrical wire.

The witness referred to her affidavit dated November 15th, 2011, in which she states in part, but not limited to; that the tenant has complained to her about her boyfriend almost every day; and reported disturbances on December 14th, 2010, December 16th, 2010, December 17th, 2010, January 2011, February 17th, 2011, September 2011, and October 10th, 2011.

The tenant accused the witness as lying; she stated that the landlord gave the notice to end tenancy after the November rent was paid, and reiterated that the motive is not late rent, but the rent increase. The landlord argued that the notice was given later on November 1st because of the police incident.

Analysis

The landlord bears the burden to prove the grounds to end the tenancy. Concerning paying rent late, the Residential Tenancy Policy Guideline states that three late payments, whether consecutive or not, are sufficient to justify a notice to end tenancy. Based on the parties' testimony it was not disputed the tenants have paid the rent late. The tenants may be at liberty to question the landlord's motive; however that does not discharge their obligation to comply with the Act. I also accept that the tenants had no legal authority to change the locks without the landlord's consent; section 31(2) of the Act states in part that a tenant must not change locks that give access to common areas unless the landlord gives consent. It is not up to the tenants to change the locks first, and then notify the landlord. If the tenants had concerns with the downstairs tenant, a remedy would be to seek assistance through dispute resolution to resolve the issue if the landlord fails to attend to the issue.

On the above noted grounds alone I find that the landlord had grounds to issue the Notice to End Tenancy; therefore, although I prefer the witness version of events over the tenant's, it is not necessary that I consider that evidence to find that the landlord's 1 Month Notice to End Tenancy is valid.

Conclusion

The tenant's application is dismissed without leave to reapply.

The 1 Month to End Tenancy is valid and this tenancy will end on the date specified on the notice. If the tenants fail to comply, the landlord is at liberty to apply for an order of possession.

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: November 28, 2011.

Residential Tenancy Branch