



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an Order cancelling a Notice to End Tenancy that has been given for Cause.

Background and Evidence

On October 25, 2011 the tenant was personally served with a Notice to End Tenancy that stated the following reasons:

- Tenant has allowed an unreasonable number of occupants in the suite.
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that:

- The tenant has had her daughter and grandchildren living in the suite with her, with the school bus even coming to the building for her grandchildren.
- They have also had numerous noise complaints from other tenants stating that the occupants of the suite are talking loudly and playing musical instruments after 9:00 pm and before 5:30 am.
- Many of the tenants are afraid of this tenant's daughter, and therefore have asked that their names not be included on their letters of complaint and they have therefore been blacked out on the copies given to the tenant.
- In the tenant manual the tenants are informed that overnight guests are only allowed for 3 nights per month.
- The daughter's car has been seen parked at the building overnight on numerous occasions.
- The tenant herself is not a problem; it is her daughter and grandchildren that have been the problem.
- See the witness letter from a tenant that states that a threatening letter was posted on rental units.
- See the email from a community manager with Kiwanis that states that she found a tenant shaking a crying who told her that the daughter of a tenant on the 3rd floor had attacked her twice in 5 minutes.
- See the email from a community manager with Kiwanis that states that she got an angry complaint from another tenant that a woman on the 3rd floor was using a dryer in the middle of the night.
- See letter from a witness that states that the daughter's car has been parked by the building every time he goes by.
- She has also provided a log of every time the tenant or her daughter has used their key-fobs to enter the building.

The landlords are therefore requesting that due to all these problems, the Notice to End Tenancy be upheld and that this tenancy is ended.

The tenants Granddaughter testified that:

- Her mother and siblings do not, and have not been living at her grandmothers suite, they have their own house with their own rooms, where they live full time.
- There have never been any instruments played or loud talking coming from my grandmother's suite and in fact when the allegations have been made, my grandmother tried to point out that she too heard the noise coming from elsewhere but the landlords would not even listen to her.
- There is a group of tenants in this building that have been fabricating complaints against my grandmother and my mother, and just because they are older, the landlords believe everything they say and ignore any complaints made by my grandmother and mother.
- My mother is harassed by these other tenants when she comes to visit my grandmother.
- It is my grandmother who is the victim here and I receive many tearful phone calls from her as a result of the harassment and threats of eviction.
- No one from my grandmother's suite posted letters on any ones door, this is all fabricated.
- My mother never attacked anyone and again the person who wrote the letter witnessed nothing.
- Even the email about someone complaining that someone was doing drying at night, mentions no person in particular and in fact makes the complainer sound like the problem tenant.
- The licence plate mentioned in the letter claiming that my mother is parked at the property all the time is my grandmothers licence plate, and it is her car parked at the building.
- No one has breached the 3 day rule for overnight guests and although the landlord claims that permission is required every time someone stays over that is not in the tenancy agreement or rules.
- Further, there are no set visiting hours in the tenants manual.

- My mother has the right to visit my grandmother and make meals for her and the landlords are restricting my grandmother's rights, and even if you look at the landlords list of entry times, no entries have been at unreasonable hours.

The applicants are therefore requesting that the Notice to End Tenancy be cancelled and that this tenancy continues.

Analysis

The burden of proving the reasons given for ending a tenancy lies with the landlord and in this case it is my decision that the landlord has not met that burden of proof.

The landlord claims that the tenant or her guests have unreasonably disturbed the other occupants of the building; however the landlord has provided no direct evidence in support of this claim. The only evidence is hearsay evidence, and that is insufficient to meet the burden of proof. I will not consider any of the evidence on which the names have been blacked out.

None of the witness letters can directly link the tenant or her invited guests to any unreasonable disturbance or interference of other occupants or the landlord.

Further although the landlord claims that the tenant's daughter and grandchildren have been living in the suite, and have breached the 3 day rule, the landlords have again not met the burden of proving that claim. Although the witness letter claims that the daughter's car is parked by the rental property every night, the tenant's granddaughter testified that the car belongs to her grandmother, and the landlords have provided no proof otherwise.

It's also my finding that the key fob logs do not prove that the 3 day rule has been breached as the tenant has the right to have her family come and visit as often as she

wishes, and the logs do not show that the family member has stayed over or entered at an unreasonable time.

Conclusion

It is my decision that the 1 month Notice to End Tenancy, Dated October 25, 2011 is hereby cancelled and this tenancy continues.

I further Ordered, that the landlord bear the cost of the filing fee paid for this hearing. The tenant may therefore make a 1 time deduction of \$50.00 from future rent payable to the landlord.

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 21, 2011.

Residential Tenancy Branch