



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 request to cancel a Notice to End Tenancy that was given for cause, and a request for recovery of the filing fee.

Background and Evidence

On October 28, 2001 the landlords personally served the tenants with a notice to end tenancy giving the following reasons:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. 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:

- They have given the notice to end tenancy for 3 main reasons. Noise complaints, an additional person living in the unit, and rude and threatening behaviour towards the landlords.
- They have had numerous complaints from other tenants about the noise caused by children screaming in the tenant's suite and in the hallways of the building.
- The noise is ongoing throughout the day and there have even been complaints of adults yelling late at night and at 2:00 to 3:00 am.
- The tenants have been given warnings about the noise but it is still ongoing.
- We also believe that the tenants have another woman and her daughter living in the rental unit without permission.
- The woman's car is in the tenant parking stall overnight most nights and they have no record of anyone buzzing to be let into their suite in the morning, so it's obvious she is living in the suite.
- Further the tenant and the tenant's friend have spoken to us in an abusive, threatening manor and although they have not actually made any threats, they frequently swear and speak rudely and are very disrespectful. As landlord they do not believe they have to tolerate such abuse.

The landlords are therefore requesting that the Notice to End Tenancy be upheld and an Order of Possession be issued.

The tenants testified that:

- ½ of the notice of complain letters that the landlord has supplied for the hearing were never given to them.
- Also some of the letters of complaint came in to the landlord on dates that they were not even living in the suite; they were living temporarily at a brother-in-laws.
- They do not have anyone else living with them, the woman is a babysitter who comes during the day and goes to her own home at night. She leaves her car in their parking stall as she only lives 2 blocks away and it's had to find parking near her place.

- Their friend does stay over on occasion but is not living with them.
- The reason she is not recorded buzzing in in the morning is because she phones up on her cell phone and I go down and let her in and help her carry things. I also don't want her waking my kids with the buzzer.
- We do not speak rudely or in a threatening manner to the landlords. The only time they may have spoken rudely was 1 time when the weekend manager had not introduced herself as the manager and they thought it was just a busy body tenant interfering in something that was none of her business. Once she informed them she was the manager they immediately changed their tone and spoke respectfully.
- The landlord is the one who speaks disrespectfully to them.

The tenants therefore request that the Notice to End Tenancy be cancelled and that this tenancy continues.

Analysis

It is my decision that I will not set aside the Notice to End Tenancy, as it is my finding that the landlords have shown that they have reasonable grounds for ending this tenancy.

I am not convinced that the tenants are unreasonably disturbing the other occupants or the landlord, as most of the noise complaints are for noise made by children during daytime hours and it is not unreasonable for children to make noise.

I do however believe that the tenants are allowing another person to live in the rental unit, in breach of their tenancy agreement.

I find it very unlikely that the woman in question is managing to leave the building every evening and arriving at the building every morning without ever being seen.

Further I find the tenants claim that the woman is phoning on her cell phone to be let in in the morning to be implausible. I find it very unlikely that a person would go to the effort to call someone on the phone when they could much more easily push a button to be let in.

Therefore since the tenants have been given a warning about a breach of the tenancy agreement, and have not rectified that breach, the landlords do have reasonable grounds to end the tenancy.

I will not set the Notice to End Tenancy aside and have issued an order of possession to the landlords.

Conclusion

This application is dismissed in full without leave to re-apply and I have issued an Order of Possession to the landlord for 1:00 pm on November 30, 2011.

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 22, 2011.

Residential Tenancy Branch