



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing was convened upon the application of the tenants seeking to cancel a notice to end tenancy given for cause.

Both the landlord and tenant appeared at the hearing of this matter and gave evidence under oath.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy.

Background and Findings

The landlord has issued a one month notice to end tenancy for cause citing Section 40 of the Act:

The tenant or a person permitted in the manufactured home park by the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,

And

The tenant has engaged in an illegal activity that has or is likely to:

Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice. The landlord says there is too much

noise coming from the rental unit and she receives complaints from other tenants about the noise. Further the landlord says there was a party going on in the rental unit and there is pumpkin smeared all over the tenant's door which has been there for a long time and has not been cleaned.

The tenant states that has lived in the rental unit for 9 years without incident. The tenant says that without her knowledge her daughter, who does not live with her, had a party while she was not home. When the tenant learned that there was a party going on in her home she says she went home and dealt with it by kicking her daughter and her guests out. The tenant says her daughter will not return. The tenant says it is the neighbor who smashed a pumpkin all over her door and that he blasts his music and bangs on the tenant's wall screaming "Bring it on".

The testimony of the tenant and the landlord are conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be here further, the landlord has failed to bring sufficient evidence to show that the tenants have significantly interfered with other tenants or the landlord or that they have engaged in an illegal activity.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy for Cause is set aside with the effect that this tenancy shall continue.

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: December 13, 2011.

Residential Tenancy Branch