



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenants' Advocate said the Tenants served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on October 31, 2011. Based on the evidence of the Tenants' Advocate, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to Cancel the Notice to End Tenancy?

Background and Evidence

The Tenants moved into the rental unit in April, 2005, but this tenancy started on June 1, 2007 as a month to month tenancy. Rent is \$975.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$445.00 on April 15, 2005.

The Landlord said her agent served the Tenant with a 1 Month Notice to End Tenancy for Cause dated October 31, 2011 by personal delivery on October 31, 2011. The Effective Vacancy Date on the Notice is November 30, 2011. The Tenants are living in the unit, but they are out of the country at the present time, so their three sons and a relative are in the unit at the present time. The Landlord said she wants to end the tenancy and she said she requested an Order of Possession if the Tenants are not successful with this application.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenants have seriously disturbed another tenant or the landlord, they have seriously jeopardizing health or safety of other occupants or the Landlord, they have put the landlord's property at significant risk, they have adversely affected the quiet enjoyment, security and physical well-being of another tenant or the landlord and jeopardize a lawful right or interest of another tenant or the landlord.

The Landlord said there was an incident on October 29, 2011 in which the Tenants' son and a person not known to the landlord or any tenant in the rental complex were involved in a fight. The Police were called to the incident, but no charges were laid and there is no police report on the incident. The Tenants' Advocate said the fight was broken up by the tenant in unit #7. The Landlord said she is concerned that this incident is indicative of what could happen while the Tenants (parents of the boy involved in the fight) are away out of the country for 5 months.

The Landlord continued to say there was another incident involving the Tenants' children in September, 2010 in which the Tenants' boys were in the parking area unattended and were thought to be doing mischief. Nothing came of this incident and the Landlord said the Tenant talked to her sons and it did not happen again.

The Tenants' Advocate said the Tenants' son (age 13 year old) did get into a fight with a 20 plus year old person riding by the rental unit on a bike. The Tenants' advocate said the Tenants' son was protecting himself and the rental property. The Tenants' Advocate said the other person in the incident is not a tenant in the rental complex and is not known to other tenants in the complex. The Tenants' Advocate continued to say the Tenants are as concerned about safety in the rental complex as any of the other tenants in the complex. She said the Tenants and their sons have not put any of the other tenants in the complex or the landlord at risk and they have not significantly interfered with anyone in the rental complex.

The Landlord said that no one in the rental complex was directly affected by the incident, but there is a perception that the Tenants' children have caused concern in the rental complex and will cause trouble in the rental complex while their parents are away. As a result of the incident on October 29, 2011 and this perception of trouble the Landlord said she is requesting an Order of Possession if the Tenant's application to Cancel the Notice is not successful.

Analysis

It is apparent from the testimony and evidence that there are perceived issues between the Landlord the Tenants' children. As well it was agreed by both the Landlord and the Tenants' Advocate that the incident on October 29, 2011 did not involve any of the other tenants in the complex or the landlord. As a result the disturbance on October 29, 2011 is a perceived problem or anticipated concern to the Landlord or other tenants in the rental complex. In Section 47 (1)(d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenants and Order the 1 Month Notice to End Tenancy for Cause date October 31, 2011 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated May 30, 2007.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the December, 2011 rent. The December, 2011 rent is adjusted to \$925.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated October 31, 2011 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The December, 2011 rent payment is adjusted to \$925.00 so that the Tenant can recover the filing fee of \$50.00 for this proceeding from 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