



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the Tenants requesting that a One Month Notice to End Tenancy be cancelled.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled or not?

Background and Evidence

The parties confirmed that they have a written tenancy agreement and that the tenancy commenced on July 01, 2011. The parties stated that the rent is \$1,300.00 per month and the rent is due on the first of each month. The Tenants still reside in the rental unit at this time.

The Tenants stated that they received a One Month Notice to End Tenancy for Cause on January 02, 2012 at their rental unit. The Tenants stated that the Notice was two pages double sided, essentially four pages, and did not state a vacancy date and that the date box on the Notice was blank.

The Landlord stated that he issued a One Month Notice to End Tenancy for Cause by placing this through the mail slot in the door of the rental unit on January 01, 2012. The Landlord stated that the Notice is not blank and that on page one the required boxes were completed, although he stated this may be faint on the Tenants' copy. The Landlord stated that the Notice is signed and dated January 01, 2012 with a vacancy date of February 01, 2012 stated on the Notice.

The Landlord stated that the Notice was issued to the Tenants because there have been many noise complaints about these Tenants, although there have been no calls to the police. The Landlord stated that this is a small building with only six suites which are two bedroom suites. The Landlord stated that the other residents complaint to him that these Tenants often party late at night and have many guests over, which disturbs

the other residents, some of whom have young families. The Landlord stated that the Tenants are two young single females who work at a bar. The Landlord stated that noise bylaws in the City require that it be quiet by 11:00 PM in the evening, however, these Tenants are making noise at 2:00 and 3:00 AM when they get home from their jobs. The Landlord stated that the other residents are too intimidated by these Tenants to speak to them about the noise and that it is only being reported to the Landlord. The Landlord stated that the Tenants have been going door to door to the other rental units after they received the Notice to seek support from the other residents and see who complained about them. The Landlord stated that no one wants to put anything in writing and that it is up to him to deal with the Tenants. The Landlord stated that he has been intimidated by the Tenants because they have called the gas company, the City, the bed bug registry, and the fire officials about issues in his building. The Landlord stated that he has cooperated and resolved all of the issues. The Landlord stated that he wants these Tenants to move out, but is willing to negotiate with them and has offered them moving expenses and to extend the vacancy date to the end of February.

The Tenants stated that they have always been friendly with the other residents of the building and that no one is intimidated by them, and they get along with everyone as it is a small building. The Tenants stated that they are not young, rather 29 years, and that they are both university graduates who work. The Tenants stated that the Landlord went around the building to try to get the other residents to sign letters of complaint about the Tenants after they filed their Application disputing the Notice, however, no one would sign a letter for him as they did not agree that there was a problem. The Tenants stated that they have good communication with their neighbors in this small building and there have been no problems, and that they have given their phone number to all of the other residents so they can call if they hear any noise. The Tenants stated they have not made any excessive noise and that they or any of their guests have not disturbed any of the other residents. The Tenants stated that they have received no noise complaints or warnings, and that the police have not been called. The Tenants stated that they feel the Landlord's issuance of the Notice is retaliation to their complaints to the gas company about a gas leak, to the City about a bed bug issue, and to the fire officials about a fire exit being blocked and fire ladder not extending to the ground. The Tenants stated that their complaints were serious and all legitimate and have all been proven and resolved with the Landlord and officials, although it has cost him money to remedy the issues. The Tenants request that the Notice be cancelled and they have no plan to move out at this time.

As the hearing concluded I allowed each party to fax me a copy of the Notice and a copy of the tenancy agreement before the end of the day. I specifically requested that they fax me each page of the documents requested. I indicated to the parties that I would consider their oral testimony today, and the requested documents that are received by fax when making my decision.

Before the end of the day, both parties faxed a copy of a one page tenancy agreement, and pages of the One Month Notice to End Tenancy. I note that the One Month Notice

to End Tenancy document used by the Landlord is an out of date form, with pages numbered 1 through 4. The Landlord provided all four pages of the Notice in his fax, however, the Tenants did not provide a copy of the first page of the Notice in their fax showing the date boxes were allegedly blank.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Tenants' testimony that they were served with the One Month Notice to End Tenancy for Cause on January 02, 2012, as the Landlord provided insufficient evidence to prove service of the document on January 01, 2012. As the tenancy agreement states that the rent is due on the first of the month, I find that the Notice was not served before the first of the month as required by the Act. As a result, despite what the Notice may say as a possible vacancy date, the earliest effective date on the Notice could be no earlier than February 29, 2012.

The Tenants disputed the Notice within ten days of receiving it as required by the Act; their Application for dispute resolution was filed on January 06, 2012.

I find that the reasons stated on the One Month Notice to End Tenancy for Cause which derive from section 47 of the Act, have not been proven by the Landlord. The Landlord has failed to provide any evidence of the Tenants causing noise disturbance to other residents. There is no documented evidence, no witnesses, and no police reports to show that noise bylaws have been violated by the Tenants. A copy of the noise bylaws for the City where the rental unit is located has also not been provided. I also do not find the Tenants' complaints to the Landlord or officials about bed bugs, fire code violations, and a gas leak equate to cause to end the tenancy. I find that the Landlord has failed to prove that the Tenants have breached the Act, Regulation, or tenancy agreement.

Based on the above-mentioned reasons I order that the One Month Notice to End Tenancy, be cancelled.

Conclusion

I have granted the Tenants' request to cancel this Notice to End Tenancy.

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: January 19, 2012.

Residential Tenancy Branch