

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began February 1, 2012.

On February 1, 2012 the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause:

- The tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that she had been and continues to receive complaints from the upstairs tenants about all of the noise coming from the tenant's rental unit. The landlord also stated that the upstairs tenants have complained about all the trash in the yard since the tenants moved in. The landlord stated that neighbours have also complained about the noise.

The tenants stated that the notice to end tenancy that is dated February 1, 2012 was posted on the door by the landlord. The landlord refuted this claim and stated that she had served the tenants in person.

The tenants testified that the noise was due to a party they had for their kids on New Year's Eve and that since that time they have spoken to the upstairs neighbours and there have not been any further issues.

The tenants stated that they do not want to stay in the rental unit as they feel there will continue to be problems with the landlord and stated in this hearing that they would be vacating the rental unit March 31, 2012.

The landlord stated that the February 2012 rent remains unpaid and question if she could take the rent from the tenants. The tenants in response stated that the landlord had refused the rent but that they would have it available tomorrow for the landlord.

Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the February 1, 2012 Notice to End Tenancy for Cause which has an effective end of tenancy date of March 31, 2012.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord refers to complaints from the other tenants in the rental unit and the neighbors but has not submitted copies of any complaints that were made in writing nor has the landlord given the tenant's a warning letter and the opportunity to correct their actions. Therefore I find that the landlord has failed in her burden of proving she has cause to end this tenancy.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated February 1, 2012 with the result that the tenancy continues uninterrupted.

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: February 27, 2012

Residential Tenancy Branch