



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 on the tenant's application to have set aside a Notice to End Tenancy for cause served on February 9, 2012 and setting an end of tenancy date of March 31, 2012.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on October 1, 2011 under a one-year fixed term rental agreement set to end on September 30, 2012. Rent is \$800 per month and the landlord holds a security deposit of \$400. The unit is occupied by the tenant and her three year old child.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served following a late morning incident on February 7, 2012 in which a cyclist riding through the parking lot of the apartment building reported that a pellet had struck the fence near where he was riding.

The resident manager was able to identify the subject rental unit with an open balcony door in the direction from which the pellet was discharged for police. As it happened, the tenant concurred that she had an air pistol which used low velocity plastic pellets that was sometimes used to shoot at a dart board in the rental unit.

According to the manager, the tenant's boyfriend who had come for lunch and was returning from an errand had told police he had been shooting the gun at the dart board.

Police confiscated the pistol and the tenant stated that it has not been returned and she does not intend to replace it.

The landlord stated that he has not had cause for concern about the tenant prior to or since this single incident.

Analysis

Section 47 of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause in circumstances in which a tenant has, jeopardized the safety of other tenants, put the landlord's property at significant risk or engaged in an illegal activity that adversely affected other tenants or the landlord as cited on the notice to end tenancy.

While the tenant said she had no knowledge of the incident, clearly the direction, open balcony door and presence of the confiscated air pistol in the subject rental unit create a compelling probability that the errant shot originated in the rental unit.

Furthermore, if the weapon was discharged by the tenant's boyfriend, her responsibility for the conduct of an invited guest would make her no less accountable than if she had done so herself.

However, given the assurance of the building manager that the conduct of the tenant has given no prior or subsequent cause for concern, and given the assurance of the tenant that the pistol has not been returned by police and that she had no intention of replacing it, I find on the balance of probabilities that this was an isolated incident.

In view of the probability that continuing this tenancy poses no likely encroachment on the rights or safety of the landlord or other tenants, I find that the Notice to End Tenancy of February 9, 2012 may be set aside.

Conclusion

The Notice to End Tenancy of February 9, 2012 is set aside and the tenancy continues.

The tenant is cautioned that this matter would be taken into consideration if there were to be any further incidents of a similar nature and might very well result in an end to the 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: March 05, 2012.

Residential Tenancy Branch