



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee.

The listed parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be cancelled and are the tenants entitled to recover the filing fee?

Background and Evidence

This 1 year, fixed term tenancy began November 1, 2010, continued thereafter on a month to month basis, monthly rent is \$585.00, and the tenants paid a security deposit of \$292.50.

I heard testimony that tenant RSD was the original tenant and resided with his daughter at the beginning of the tenancy. Since that time, the tenant's daughter has vacated the rental unit and the tenant's son, tenant RGD, is now residing in the rental unit. When questioned, RGD stated he was 21 years old.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenants a 1 Month Notice to End Tenancy for Cause.

The Notice was dated April 14, 2012, was served to the tenants on that date and the effective end of the tenancy date is May 31, 2012.

The cause as stated on the Notice alleged that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's relevant evidence included a written submission, dated April 28, 2012, with the landlord's explanation of the events surrounding the issuance of the Notice, a letter from another tenant, dated April 24, 2012, with complaints about the tenants, another letter from another tenant, dated April 23, 2012, with complaints about the tenants, a letter from the landlord's agent which accompanied the Notice and which explained to the tenants the reason for the issuance of the Notice, the tenancy agreement and the Notice.

In support of their Notice, the landlord's agent submitted that tenant RSD began working out of town for the most part, leaving tenant RGD to remain in the rental unit unaccompanied. The landlord stated that she began receiving numerous complaints about the noise emanating from the rental unit due to RGD's music, television, video games and guests partying.

Additionally, the landlord stated that RGD's car was noisy and woke up other tenants in the residential property during the night.

The landlord submitted she had to question a group of young people about carrying beer into the rental unit due to the complaints she had been receiving about excessive party noise. The landlord stated that her inquiries resulted in numerous profane comments and name calling from the young people.

The landlord submitted that she has been called during the night by a number of tenants to deal with the noise.

The landlord also argued that the tenants had a dog in the rental unit, in violation of the tenancy agreement.

When questioned, the landlord confirmed that there have been no written warnings to the tenants.

In response, the tenant RGD denied making excessive noise, or at least, if he was told about noise, he complied with the request.

In general, the tenant denied making repeated excessive noise disturbances.

The tenant also stated that his car did not make a lot of noise, but that perhaps going up the hill, the car's engine noised bouncing off the buildings may have impacted the noise level.

The tenant stated that they do not have a dog, but that the dog came with a friend of his, stayed just 10 minutes, left, and has not returned.

Analysis

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

Once the tenants made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I was persuaded by the lack of written warnings to the tenant about excessive noise, with notice that a continuation of such noise could lead to the end of the tenancy.

Due to the lack of proof of written warnings, the landlord's evidence of excessive noise prior to and up to the time of the issuance of the Notice was disputed verbal testimony.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

Due to the above, I therefore find that the landlord has submitted insufficient proof to prove the cause listed on the Notice.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued April 14, 2012, for an effective move out date of May 31, 2012, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As I have found merit with the tenants' application, I award the tenants recovery of the filing fee. I direct the tenants to withhold the amount of \$50.00 from their next or a future month's payment of rent in satisfaction of their monetary award.

I find it necessary to inform the tenants that although this Notice is cancelled due to the landlords' insufficient evidence, they are put on notice that any consistent written warnings about his same type of alleged behaviour without correction may result in the landlords issuing another 1 Month Notice to End Tenancy for Cause.

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: May 10, 2012.

Residential Tenancy Branch