



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on April 06, 2012. The monthly rent is \$560.00 payable on the first of each month.

On May 10, 2012, the landlord served the tenant with a one month notice to end tenancy for cause. The notice was served for the following reasons;

1. Tenant or a person permitted on the property by the tenant:
 - has significantly interfered with or unreasonably disturbed another occupant or the landlord
2. Tenant has engaged in illegal activity that has or is likely
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord stated that the tenant has numerous visitors through the day and late at night who create noise disturbances. She also stated that the visitors leave the back door propped open for easy access to the building, which compromises the safety and security of the other occupants. The landlord filed three letters of complaint written by other residents and dated later than May 10, which is the date of the notice to end tenancy. The landlord did not serve the tenant a written warning, but stated that she gave him verbal warnings.

The tenant argued that he did not create any noise disturbances and the noise may be coming from the neighboring unit. He stated that he was unaware of any complaints and was never given a verbal warning by the landlord.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has significantly interfered with or unreasonably disturbed another occupant and/or has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant.

Based on the testimony of both parties, I find that the landlord did not notify the tenant in writing, about the noise complaints. The tenant denied having caused any noise disturbances. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord did not have adequate evidence to support her attempts to notify the tenant about the complaints of noise disturbances. The letters of complaint were written after the tenant was served the notice to end tenancy.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated May 10, 2012. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: June 13, 2012.

Residential Tenancy Branch