



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC and FF
Tenant: MT, CNC, MNDC, OLC

Introduction

This hearing was convened on applications by both the landlords and the tenant.

By application received on July 20, 2012, the landlords sought an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served June 26, 2012 and setting an end of tenancy date of July 31, 2012. The landlord also sought to recover the filing fee for this proceeding from the tenant.

By application of July 10, 2012, the tenant sought more time to make application to contest the notice, to have both notice set aside, monetary compensation for loss of quiet enjoyment, and an order for landlord compliance.

As a preliminary matter, I find that the tenant's application was on time and that an extension is not required.

Issue(s) to be Decided

The landlord's application requires a decision on whether the Notice to End Tenancy should be upheld with an Order of Possession and whether the landlord is entitled to recover the filing fee for this proceeding from the tenant.

The tenant's application requires a decision on whether the tenant on whether the notice should be set aside, whether the tenant is entitled to monetary compensation for loss of quiet enjoyment and whether an order for landlord compliance is warranted.

Background and Evidence

This tenancy began on December 2, 2008. Rent is \$625 per month and the landlord holds a security deposit of \$312.50 pad at the beginning of the tenancy.

As a matter of note, the tenant is a senior citizen who is somewhat retiring in her interactions with others and is assisted by her daughters from time to time.

During the hearing, the landlord gave evidence that the precipitating incident for the Notice to End Tenancy arose when the tenant had been for some time advising her daughter, KT, that her sleep had been interrupted by various noises in the building.

According to the recollection of the building manager, KT had called her on June 1, 2012 to relay her mother's concern about the tenant upstairs making noise at night, awakening her, causing great difficulty getting back to sleep. The building manager recalls that KT told her that, if she did not exercise her duty as manager to address the problem, KT herself would deal with the upstairs tenant. KT said she had not intended to convey that she would take matters into her own hands.

The building manager wrote to the tenant on June 11, 2012 imploring her to contact the building manager directly if there was a problem that needed to be dealt with and that failure to do so might result in a Notice to End Tenancy.

KT subsequently wrote to the landlords on June 18, 2012 expressing her dissatisfaction with the response of the building manager to her mother's concerns, although the building manager herself spoke of the difficulty of assisting the tenant as she was reluctant to open the door when staff attended to do repairs.

KT gave evidence that her mother a great aversion to conflict, is reluctant to speak on her own behalf and finds the building manager intimidating. Therefore, she felt compelled to intercede on her behalf.

The tenant's daughter stated that her mother has been bothered by noise and loss of sleep since March of this year and submitted a letter to that effect from her mother's doctor.

Therefore, the tenant claims \$1,419.24 in compensation for loss of quiet enjoyment based on return of full rent for a calculated disturbance of four nights per week, or 56.77 percent of the rent paid for the period.

The landlord stated that she asks every tenant, including the applicant, about the state of their tenancy when they pay their rent on the first of each month, and the applicant has consistently affirmed that matters are satisfactory. The landlord asks how she can be expected to address concerns when she has not been clearly advised of them.

Apart from noise associated with repair of vandalized laundry facilities, the building manager was aware of concerns about the tenant directly above the applicant. She stated that tenant is a bachelor who goes to bed at 11 p.m. and only gets up to use the washroom at night. She submitted a statement from him to the effect that he makes every effort to avoid disturbing others.

The landlord submitted numerous testimonials from present and past tenants stating that she has been an efficient and pleasant manager throughout her 14 years on the job.

The tenant stated that she and her sister are helping their mother search for more appropriate accommodation which she feels will happen over the next couple of months.

Analysis

As to the landlord's application, I find that she had some cause for concern when she believed that the tenant's daughter might be approaching another tenant with a grievance, an action that is appropriately the domain of the manager.

However, I do not find that there is sufficient cause to warrant ending the tenancy.

As to the tenant's application, in the absence of timely, clear, specific and concrete written advice to the landlord from the tenant, I find that the tenant has not sufficiently proven a loss of quiet enjoyment within the reasonable power of the landlord to control.

Therefore, I find that the tenant is not entitled to monetary compensation for loss of quiet enjoyment and that there is no need for an order for landlord compliance.

Conclusion

Both applications are dismissed without leave to reapply.

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: July 30, 2012.

Residential Tenancy Branch