



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Preliminary Issues

At the outset of this hearing two females signed into the hearing and identified themselves as an occupant of the strata building (witness 2) and her landlord (witness 1). The occupant confirmed she resides below the Tenants who are party to this dispute and was attending this hearing as witness (2) for the Landlord. Witness (1) confirmed she was not an agent for the Landlord and that her presence at the hearing was strictly as a witness.

The respondent Landlord had not signed into this hearing therefore I instructed both witnesses to disconnect from the hearing. I informed the witnesses that I would contact them if I needed to hear their testimony. Shortly afterwards the Landlord signed into the hearing and acknowledged that witness (1) called and told him that he needed to sign into the hearing.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to set aside a 1 Month Notice to end tenancy for cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Notice to end tenancy for cause be set aside?

Background and Evidence

The parties entered into a month to month tenancy agreement which began on July 1, 2012. Rent is payable on the first of each month in the amount of \$1,100.00 and on July 1, 2012 the Tenants paid \$550.00 as the security deposit.

The Landlord stated that he did not submit evidence in response to the Tenant's application. After a brief discussion the Landlord advised that the evidence received at the *Residential Tenancy Branch* which was marked received by the Landlord was submitted by witness (1). The Tenant acknowledged receipt of the witnesses' evidence which included, among other things, a copy of the strata by-laws and e-mails between the occupant and her landlord.

The Landlord deposes that he issued the 1 Month Notice to end tenancy when the Tenants' behaviour failed to change after he issued them two written complaints. He said that he had received complaints from the occupant directly below the Tenants on July 7, 2012 saying the Tenants were yelling and fighting and again on July 21, 2012 complaining that there was excessive noise coming from their T.V. The Landlord could not provide evidence as to the time of day the incidents occurred but thought it may have been early evening.

The Landlord advised that the Tenants' rental unit is located on the second floor of a four story wood frame building that was constructed in approximately 2008. The units in the building are individually owned which and operated under strata by-laws. Each owner manages their own units if they have rentals. He acknowledged that there were occupants above, below, and on either side of the Tenants unit and that he has only ever received complaints from the occupant directly below.

The Landlord submitted that the second reason for issuing the notice relates to complaints that the Tenants were smoking on their balcony. He argued that the strata by-laws prohibit smoking on the deck; however, during the hearing the Landlord was not able to point to a rule in the by-laws which prohibits smoking on balconies. He did however point to a section which stipulates that cigarette butts were not to be thrown off of balconies.

The Tenants submitted evidence outlining a chronological list of events, confirming receipt of the 1 Month Notice on July 28, 2012, and written statements from witnesses who confirmed the Tenants were out of town at times when two of the alleged occurrences took place. The Tenants acknowledged that the building manager informed them of complaints from the lower occupant and noted how the complaints were usually held onto for a few days and dropped off once several had accumulated.

The Tenants acknowledged that the building manager asked them if they smoked when they first moved into the building and told them they could smoke on their balcony if it did not disturb other occupants. Shortly afterwards their Landlord gave them a key to access the third floor patio and requested they smoke there. They were also requested to smoke inside their unit with a fan blowing the smoke outside. The Tenants stated that they had been working to quit smoking and have been smoke free for six weeks. They noted how the lower occupant is still complaining about cigarette smoke even though they no longer smoke.

The Landlord confirmed that the complaints were all received from the lower occupant and nothing from the other neighbouring occupants. He confirmed that he has never attended the rental unit immediately upon receiving such complaints and occupants of this building usually go to the building manager with their initial complaints which are later filtered to the Landlord and their tenants.

After consideration of the evidence presented during the hearing I did not feel it was necessary to bring the Landlord's witnesses back to provide oral testimony as they had provided written submissions for consideration.

Analysis

I have carefully considered the aforementioned and the documentary evidence that was before me.

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonable disturbed another occupant or the landlord

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

In this case, I find the Landlord has provided insufficient evidence to warrant upholding the Notice to end tenancy. I make this finding in part because the Landlord has relied solely on complaints from one occupant which related to noises of normal living (walking from room to room or noises coming from a television), during normal waking hours, and smoking in a building which is not designated as a non-smoking building. Furthermore, there was no evidence that indicated the Landlord or building manager did anything to determine if the complaints were warranted while there was disputing evidence which indicated that the Tenants were not even at the unit during alleged occurrences. Accordingly, I set aside the 1 Month Notice issued July 28, 2012.

The Tenants have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The 1 Month Notice to end tenancy issued July 28, 2012, is HEREBY CANCELLED, and is of no force or effect.

The Tenants may deduct the one time award of **\$50.00** from their next rent payment, as full recovery of their filing fee.

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: September 10, 2012.

Residential Tenancy Branch