



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This was the hearing of applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing. The Tenant applied to cancel a one month Notice to End Tenancy for cause and the landlord applied for an order for possession.

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 29, 2012 be cancelled?

Background and Evidence

The rental unit is a main floor apartment in the landlord's four-plex in Delta. There is no written tenancy agreement. The tenancy began in July, 2012. The landlord served the tenant with a one month Notice to End Tenancy dated September 29, 2012. The Notice required the tenant to move out of the rental unit by October 31, 2012. The stated grounds for the Notice to End Tenancy were that the tenant has significantly interfered with or unreasonably disturbed other occupants and seriously jeopardized the health, safety or lawful right of another occupant or the landlord. The landlord also claimed that the tenant engaged in illegal activity that had or was likely to adversely affect other occupants or jeopardize a lawful right or interest of another occupant or the landlord.

The landlord submitted written statements from the tenant who occupies the basement apartment beneath the rental unit, and from an occupant living in an adjacent unit. The downstairs occupant complained about noise, loud music cigarette smoking and drug use. She complained about other rude behaviour, the tenant's refusal to allow her to park on the property and the tenant's use of laundry facilities on days when she was not entitled. She said the tenant has been peeping in her windows and entered her suite without permission.

The upstairs neighbour complained in a letter that the tenant has knocked on her door and asked for food. She cited instances when the tenant has disturbed her with

inappropriate requests and she complained that the tenant had tried to involve her in disputes with the downstairs tenants.

The landlord complained about the tenant smoking in and around the rental unit, but he acknowledged that there is no tenancy agreement provision that prohibits smoking.

The tenant disputed the landlord's grounds for ending the tenancy. She denied that she is a drug user. The tenant testified that the downstairs tenants moved in several months ago and they have played loud thumping music in their suite and have annoyed and disturbed the tenants. The tenant submitted statements from neighbours who commented on the noise caused by the downstairs occupants. The tenant complained about the garbage and mess outside the rental property created by the downstairs tenants.

The tenant denied the landlord's claim that she had illegally entered the downstairs tenant's suite. The tenant said that she simply stepped inside the door to speak about noise and the occupant then phoned the police. The police attended, spoke to the tenant and went downstairs to tell the occupant to lower the noise. The police officer told the tenant she could call back if the noise continued.

Analysis and conclusion

The burden of proving that there is cause to end the tenancy rests with the landlord. The landlord has not proved that the tenant has engaged in any illegal activities. The landlord's evidence that the tenant has interfered with or disturbed another occupant consists solely of written statements, principally from the downstairs tenant. The landlord acknowledged at the hearing that he has no direct knowledge of the alleged grounds for the Notice to End Tenancy. The tenant denied the claims made in the written statements submitted by the landlord. She said that the downstairs occupants were the cause of problems and that the issues began when the occupants moved in. The landlord did not call any other occupant of the rental property to testify at the hearing. I accept and prefer the direct testimony of the tenant, given under affirmation at the hearing to the written statements submitted by the landlord, because the written statements were denied by the tenant and the authors did not attend to be subject to any questioning about their evidence.

I find that the landlord has not demonstrated on a balance of probabilities that he has cause to end the tenancy; I therefore order that the one month Notice to End Tenancy dated September 29, 2012 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*. The tenants application is

allowed. The landlord's application for and order for possession and recovery of the filing fee is dismissed.

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: November 14, 2012.

Residential Tenancy Branch