



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

Preliminary Matters

The landlord supplied several documents as evidence, which were anonymous in nature. Witnesses were willing to testify but would not allow the tenant to hear their testimony. Therefore, I determined that I would not consider the anonymously issued documents, nor would I call the witnesses to testify. A party to a hearing has the right to hear testimony given, to ask questions of witnesses and to respond to those submissions. In the absence of the identity of those who wrote the letters, I determined it would be unfair to consider them. The landlord was at liberty to provide oral testimony.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on January 24, 2013 be cancelled?

Are the tenants entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 1, 2011. The unit is one of a number in a wood-frame building constructed in 1973.

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenants indicating that the tenants were required to vacate the rental unit on February 28, 2013.

The reason stated on the Notice to End Tenancy was that the tenants had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord supplied copies of 2 "breach" letters; one issued on August 20, 2011 for an alleged threat made to another occupant. The male tenant was accused of having banged loudly on the door of an occupant who lives on the 3rd floor. A "breach" letter issued on October 31, 2011 referenced "numerous complaints" made between October 17 and 28, 2011. The complaints were in relation to yelling and banging sounds. The tenants were warned this was the 2nd warning and that they could be evicted.

On January 23, 2013 at approximately 8:30 p.m. the landlord was notified by 2 different occupants of the building that some sort of disturbance was occurring in the tenant's unit. The landlord went to the unit, walked around the hall and determined that there was a fight of some sort occurring in the unit. The landlord could hear the male tenant yelling and swearing and singing. The landlord believed the male tenant was drunk. The landlord then spoke to other occupants and asked them how they found the tenants and she was told that they did fight on occasion. The landlord then went by the unit again and heard the male tenant swearing; the landlord then called 911.

There is no dispute that at approximately 9:20 p.m. the police arrived.

The tenant said that she was home alone and when she saw the police at her door she thought something had happened to her spouse; he works as a truck driver and was at work at the time. The tenant allowed the police into her home; they searched and did not find the male tenant. The female tenant was taken into custody.

The tenants supplied a copy of the male tenant's driving log, issued by the employer. Truck drivers keep logs of travel time; this log showed that the male tenant had left Prince George at approximately 2:15 p.m. on January 23, 2013 and that by approximately 6 p.m. he was in Smithers. The landlord did not dispute the contents to the work records.

The landlord said that she believed it was the male tenant yelling and that perhaps it could have been the television, but that if she were to hear such a disturbance again she would call the police. The landlord said there had been other complaints; no dates or any specific information on disturbance over the past number of months was supplied.

Analysis

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 have significantly interfered with or unreasonably disturbed another occupant or the landlord.

In reaching this conclusion I have found, on the balance of probabilities that the male tenant was not at home on the evening of January 23, 2013. The log of the male tenant's employment driving records showed that he had left home that afternoon. This record was not disputed by the landlord.

The 2 "breach" letters issued in 2011 were of no value. The August letter involved banging on a door; the 2nd letter made vague allegations that did not appear to have been investigated.

There was no evidence before me that the tenants had seriously jeopardized the health of anyone or that an unreasonable disturbance occurred. I find it is just as likely that the tenant's television was turned on and that it was perhaps a bit too loud. Therefore, I find that the 1 month Notice to End Tenancy for Cause issued on January 24, 2013 is of no force and effect; the tenancy will continue until it is ended in accordance with the Act.

The tenants are entitled to deduct the \$50.00 filing fee from the next month's rent owed.

Conclusion

The Notice is cancelled, the tenancy will continue.

The tenants are entitled to deduct the \$50.00 filing fee from the next month's rent due.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 22, 2013

Residential Tenancy Branch

