



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 for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause (the “notice”) issued on March 31, 2013.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the notice to end tenancy issued on March 31, 2013, be cancelled?

Background and Evidence

The tenancy began on February 1, 2013. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 and a pet deposit of \$150.00 were paid by the tenant.

As neither party filed a copy of the notice, the parties agreed that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on April 30, 2013.

The reason stated in the notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlords testified that both tenants in the upper and lower units' tenancies began in February 2013. The landlords stated shortly after their tenancies commenced they went away on a holiday and their son was acting as their agent. During this time there were several complaints received from the tenant in the upper unit regarding the tenant in the lower unit. The landlord stated that when they spoke to their son, he indicated there may have been an incident or two of noise, however, that the tenant in the lower unit corrected the situation.

The landlord testified that they were told that the police had attended at the lower unit due to complaints they received by the tenant in the upper unit. The landlords stated they contacted the police to further investigate the alleged complaints; however, the police were unable to provide any information due to confidentiality. The landlord stated they have not provided the tenant with written notice to correct the situation as it has not been fully identified.

The witness for the landlord testified that when the landlords were away the tenant in the lower unit would play loud music, which would go late into the night. The witness stated the tenant also yells using foul language, and raising his voice that she can often hear in her unit.

The witness for the landlord testified that she has called the police on several occasions.

When the witness was questioned for specific detail of these incidents, such as dates and times, the witness was unable to provide further details.

The tenant testified that they have rectified the loud music by removing any subwoofers that they had attached to their stereo and they have not received any further complaints. The tenant stated the police did attend his unit when the landlord was away; however, the complaints issued by the tenant in the upper unit were not justified.

The witness agreed that the music has been much quieter recently.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case, the evidence of the landlords was that they were not in town to investigate the complaints, however, their son was acting as agent and felt that the situation was rectified.

The evidence of the landlords' witness was the tenant in the lower unit has unreasonably disturbed her by playing loud music and yelling. The landlord's agent confirmed with the landlord that there was a noise issue of music, however, that was rectified. The evidence of the tenant was the subwoofers were removed. The witness for the landlord confirmed the music was much better.

The evidence of the witness was that she called the police on several occasions. However, the witness could not provide dates, and details of those incidents. The evidence of the tenant was that the police did attend on several occasions; however, alleged the complaints were unfounded by the tenant in the upper unit.

In this case, both parties have provided a version of events and both versions are probable and neither party provided a copy of the police reports to support their position.

I find without further witnesses or documentary evidence, such as copies of these police reports to support their position that the landlords have failed to provide sufficient evidence to support that the tenant did significantly interfere with or unreasonably disturb another occupant. Therefore, I grant the tenant's application to cancel the notice. The tenancy will continue until legally ended in accordance with the Act.

The tenant is cautioned that unreasonable and ongoing noise, such as loud music or any yelling by the tenant or any of his guests could be grounds to end the tenancy if proven at any future hearing. A copy of this decision may be submitted as evidence at any future hearing.

Conclusion

The tenant's application to cancel a one month notice to end tenancy for cause is granted, the tenancy will continue until legally ended in accordance with the Act.

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: May 09, 2013

