



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover their filing fee for this application.

Service:

The Notice to End Tenancy is dated April 30, 2013 to be effective May 31, 2013 and the tenant confirmed it was served personally. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on the landlord who agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in 2008 and rent is \$680 a month. It was agreed by the parties that this building has had some issues with illegal drug activity in the past and it is now a 'crime free' building by addendums in the leases. Security has been in effect for the past several months and the doors have been alarmed.

The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or their guests have significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized health or safety and put the landlord's property at significant risk.; and

c) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

The landlord provided one letter in evidence from a 16 year resident, a note from the previous manager, logs from the security company and a 'Final Disturbance Notice' dated April 30, 2013 citing problems with foul language, uncouth behaviour and undesirable traffic to the tenants' suite into the early hours on many occasions

The tenant denies the allegations. They said they had one noise complaint about playing games and immediately corrected it. The previous manager said she was upset about some of her confidential notes being used and actually this tenant had helped her to evict some of the problematic persons in the building. When questioned by the landlord's representative, she said she was overwhelmed and had to leave the conference. The tenant pointed out that the black car which had been the subject of many of the security reports belongs to a person who has a girlfriend in the building and visits her frequently and visits these tenants only sometimes. The tenants contend that the security cameras would show that they are peaceful people who do not often go out and do not have excess short visiting which would indicate some drug traffic problems. The landlord's representative said that she does not have access to them as they are still being moved from the previous manager's apartment.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

While I find the evidence of the landlord credible, as I explained during the hearing, I find there is insufficient evidence to evict these tenants who have resided in the building for about 5 years. I find the letter from the neighbour tenant is mainly a complaint about the Ministry assistance to the tenants. While it accuses the tenants of selling drugs, the letter provides no proof of the statement. There is no mention of police involvement or how they know that drug trafficking might be involved. The previous manager of over five years was supportive of this tenancy and said they had helped her in her efforts against drug trafficking. While she became 'overwhelmed' when being questioned by the landlord's representative, I find her evidence credible that she did not perceive problems with this tenancy.

In respect to the security logs, I find the information about some cars coming and going at speed and/or the male tenant being met by one of the drivers is insufficient evidence that the behaviour of these tenants was significantly impacting other tenants or the landlord or putting the property at significant risk. I also find insufficient evidence to indicate illegal activity. I find the male tenant's explanation equally probable that the black car is used by someone who visits elsewhere in his building and that the male tenant has been mistaken in the past for someone who did cause trouble as they have similar build and wear similar hoodies. The tenant provided evidence that they had paid the filing fee.

For all of the above reasons, I set aside the Notice to End Tenancy for cause dated April 30, 2013 and find the tenants entitled to recover the filing fee.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is granted. The Notice to End Tenancy dated April 30, 2013 is hereby set aside. **The tenancy is reinstated.**

I HEREBY ORDER that the tenant may recover their filing fee by deducting \$50 from their rent for July 2013 which means that July rent will be \$630. As rent is remitted directly by the Ministry, I HEREBY ORDER the landlord to refund \$50 of July rent to the tenants.

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: June 06, 2013

Residential Tenancy Branch