



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LRE, OPC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on June 10, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70.

The Landlord applied on June 19, 2013 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the amount claimed?

Is the Tenant entitled to an order restricting the Landlord’s entry into the unit?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy of an upper unit in a fourplex started on November 9, 2011. Rent of \$750.00 is payable monthly on the 30th day of each month.

On May 31, 2013 the Landlord personally served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The Reasons for the Notice are as follows:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- The tenant is repeatedly late paying rent.

The Landlord states that over the last six months the Tenant has been late paying rent in March and April 2013. The Landlord states that the Tenant was previously late for a rent payment in the summer of 2012. The Landlord further states that the Tenant made loud banging noises on December 15, 2013 and on April 10, 2013 and that they were informed by the co-Tenant that this was caused by the Tenant throwing a computer. The Landlord states that the Tenant also played his music loud at approximately 9:30 p.m. on two occasions in May 2013. The Landlord states that on one occasion the music was so loud it could be heard three blocks away. The Witness, the tenant in the unit below the Tenant, states that on December 15, 2013 the Tenant made loud banging noises. The Witness states that he does not know what time of the day this was as he was sleeping when the noise occurred.

The Tenant states that he has asked the Landlord who lives in the unit next to the Tenant to lower their music and TV as the Tenant cannot hear their own TV. The Tenant states that he did turn his TV up in order to hear. The Tenant states that no noise has ever been made during the daytime.

The Tenant states that a bookshelf was left for him in the common area and that after serving his dispute of the Notice, the Landlord removed it. The Tenant does not know the age of the bookshelf as it was given to him. The Tenant claims \$125.00 as the replacement value. The Landlord states that the bookshelf had belonged to her sister, was old and it was left in the common area. The Landlord states that her sister purchased the book shelf at a thrift shop for \$5.00. The Landlord states that it was removed to return to her sister.

The Tenant states that on the night that they had a dispute with the Landlord over each other's loud music, the Landlord has entered the common area without the Tenant's permission and turned off the power. The Tenant states that the power was then turned on by the Tenant. The Tenant states that the Landlord did not enter his unit and asks that the Landlord be restricted from entering the common area. The Tenant states that the common area joins his unit with the lower tenant's unit.

The Landlord states that the common area is a hallway and staircase and that he uses this area to access the laundry room for repairs and in the past when he was making renovations to the lower unit. The Landlord denies turning off the power on this occasion and states that the breaker blew and that access to the power is in the lower tenant's unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given that the Tenant has only been late on two occasions since summer 2012, I find that the Landlord has not substantiated that the Tenant has been repeatedly late paying the rent.

Given the few times that the Tenant has been loud, that only one other tenant complained about noise on one occasion over 6 months ago, and that the two occasions involving loud music were not after 11:00 p.m., I find that the Landlord has not provided sufficient evidence to substantiate that the Tenant caused an unreasonable disturbance. While the four occasions can be seen as a disturbance, I do not consider this disturbance to be unreasonable. As the Landlord has not substantiated either of the reasons for the Notice, I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. As the Notice is not valid, I dismiss the Landlord's application.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given that the Tenant did not know the age of the bookshelf, I accept that the Landlord's evidence of the age and original purchase price of the bookshelf. Without considering whether the Tenant had a right to the bookshelf, I accept the Landlord's undisputed evidence of the age and original price of the bookshelf and find that the Tenant has failed to establish the costs claimed. I therefore dismiss the Tenant's claim for compensation.

Based on the Tenant's evidence that the Landlord did not enter the Tenant's unit, I find that the Tenant has not substantiated that the Landlord should be restricted from entering the Tenant's unit any further than already provided under the Act. I therefore dismiss this claim of the Tenants.

Conclusion

The Notice is cancelled and of no effect. The tenancy continues. The Tenant's remaining claims are dismissed.

The Landlord's application 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: July 12, 2013

Residential Tenancy Branch