



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served.

The Tenant's Advocate has submitted late evidence in the form of 8 photographs, but state that the Landlord was not served. The Landlord has confirmed that no documentary evidence has been received from the Tenant and that no documentary evidence has been filed by the Landlord for this hearing. I find that there is prejudice in reviewing the photographs provided by the Tenant as the Landlord has not been served and as such will not review it, but that the Tenants are free to refer to them verbally in their testimony.

During the hearing, the Tenant's Advocate requested that their copy of the decision be forwarded to the Advocates Office.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Background and Evidence

There is no signed Tenancy Agreement, but both parties confirm in their direct testimony that the Tenants pay rent to live at the disputed address.

Both parties agreed that the Landlord served the Tenants with a 1 month notice to end tenancy dated May 30, 2013. The stated effective date of the notice is June 30, 2013. The notice provides 4 reasons for cause.

Tenant has engaged in illegal activity that has, or is likely to:

- (1)-damage the landlord's property.
- (2)-adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- (3)-jeopardize a lawful right or interest of another occupant or the landlord.
- (4)-Tenant has caused extraordinary damage to the unit/site or property/park.

The Landlord states that the Tenants damaged his property by putting holes in the rental unit. The Tenants disputed that any damage has occurred in the rental unit and that there was an agreement between the two parties to perform repairs/construction on the rental unit. The Landlord states that he is worried about his safety stating that the Tenants are always yelling at him and that he fears for his safety. The Tenants dispute this. The Landlord stated that he was fearful for his safety, but has not filed a complaint with the police.

Analysis

The Landlord has not provided any supporting evidence of illegal activity or of any significant damage caused by the Tenants. The Tenant is disputing the Landlord's reasons for cause.

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as he has served the Tenants with a notice to end tenancy for cause. The Landlord has failed to provide any supporting evidence of illegal activity of any damage to the rental unit. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof on a balance of probabilities, and the claim fails.

I find on a balance of probabilities that the Landlord has failed to establish his reasons for cause. The Landlord has not provided sufficient details of any illegal activities or proof that the Tenants are causing extraordinary damage to the unit/site or property. The Tenant's Application to cancel the notice to end tenancy dated May 30, 2013 is granted. The notice is set aside and the Tenancy shall continue.

Conclusion

The Tenant's Application to cancel the notice to end tenancy is granted.
The notice is set aside and the Tenancy shall continue.

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 03, 2013

Residential Tenancy Branch

