



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 the filing fee for this application.

Service:

The Notice to End Tenancy is dated June 14, 2013 to be effective July 31, 2013 and the tenant confirmed it was served by mail to her. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord 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? Is the tenant entitled to recover filing fees for this application?

Amendment:

The landlord requested an amendment to show their correct name on the Decision and Order. They are a commercial landlord and the tenant had named one of their agents as landlord. The tenant had no objection so the landlord's name is amended as requested.

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 February 1, 2012, rent is \$1050 a month and a security deposit of \$525

was paid in January 17, 2012. The landlord served a Notice to End Tenancy for the following reasons:

a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided a large number of letters in evidence, all from two different tenants who resided below this tenant. The first tenant vacated in October 2012, partly because of the problem they had with the noise from the unit above. There was a new tenant in January 2013 and they have filed about 10 letters of complaint and the landlord said they were prepared to suffer the consequences of breaking their lease unless the landlord took steps to handle this noise problem. The complaints mostly relate to the sound of children's feet running and jumping back and forth overhead most of the day and the present tenant has documented hourly the problems including yelling and screaming periodically. The landlord issued a number of warning letters and said that they had also had many conversations about the problem with no resolution.

The tenant alleges that the Notice should be set aside because the landlord accepted them as tenants with assurances that it was a new building and properly insulated. She also said that they were away from home when some of the complaints were made so they were wrong. The landlord said it was a new building but the noise level in this case is extreme and an agent had heard the noise themselves.

Included with the evidence is a copy of the Notice to End Tenancy, the lease and many letters of complaint and warning letters.

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

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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. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the cause cited, namely, that she or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. Two successive tenants in their letters and log of times disturbed support the landlord's oral sworn testimony that the tenant's family is excessively noisy and disturbing to the tenants below. Although the tenant alleged she was assured the building had sufficient insulation, I find this is not sufficient reason to excuse behaviour that is so disturbing to other occupants.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on July 31, 2013. The landlord said that the tenant has not paid rent for July so they have filed an application for a monetary order also to be heard at a later date.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on July 31, 2013. An Order of Possession is issued to the landlord effective July 31, 2013. I find the tenant not entitled to recover filing fees for this application as it was unsuccessful.

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 24, 2013

Residential Tenancy Branch

