



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC OLC 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;
- b) To compensate the tenant for harassment and impairment of their lifestyle;
- c) That the landlord comply with the Act and Regulations; and
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated June 29, 2013 to be effective July 31, 2013 and the tenant confirmed it was served personally. 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 proved on the balance of probabilities that they have been harassed through act or neglect of the landlord and/or that the landlord is not complying with the Act and Regulations? If so, are they entitled to compensation and recovery of the filing fee?

Background and Evidence

Both parties and witnesses 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 September 2012 on a fixed term to August 31, 2013, rent is

\$730 a month and a security deposit of \$350 was paid. The landlord served a Notice to End Tenancy for the following reason

- b) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- c) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord provided detailed evidence of dates and complaints of loud music and a pungent smell that constantly bothered the upstairs tenants. He said he visited the upstairs suite and both he and his son had smelt the pungent smell which the tenants complained about. Police were called but could not identify the smell. The upstairs tenants gave evidence of the male tenant's respiratory problems which are being worsened by the pungent odours variously described as a chemical/acetone smell that gets into nose and eyes. The female tenant said this had started to affect her at work and she has provided a letter from a colleague that notes the deterioration in her overall well being. They also made numerous complaints of music being played loudly during the middle of the night. The landlord said he had emailed the downstairs tenants about the concerns but the problems persisted. The upstairs tenants said they will be forced to move if the downstairs tenants are not evicted as they have serious health issues due to the continuous pungent odours; although the downstairs tenants are leaving their windows open even during winter, it does not override the odours. The landlord requests an Order of Possession if the tenant is unsuccessful in the hearing.

The tenants said they have had problems since the upstairs tenants moved in but had lived there previously for four years with no problem. They said they do not smoke but when challenged by the landlord, they admitted the male tenant had quit so told the truth when he said he did not smoke at the beginning of the lease; however he had restarted due to the harassment. The female tenant says she uses aromatherapy and sometimes nail polish (acetone smell) but these were ordinary smells and should be tolerated. The landlord submitted a letter from their previous landlord, the former owner, who said the male tenant did smoke although the female tenant denied it and sprayed the unit to over ride the smell; he also detailed other problems the tenants had caused them by fighting with them and being rude.

They claim compensation for harassment. They said they have had to change their cooking style since moving in due to complaints about garlic smell and they have had constant complaints from the upstairs tenants which has caused the male tenant to go into depression. They claim \$5000 in compensation.

Included with the evidence is the Notice to End Tenancy, numerous emails concerning complaints, a letter from the previous landlord, statements of the parties and other letters.

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.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that they or persons permitted on the property by them has significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord's evidence is strongly supported by both tenants from upstairs giving straightforward detailed accounts of the noise and pungent smell emanating from the tenants' unit. I find it also supported by the fact that the landlord and son had both smelt this pungent odour and it was sufficiently concerning to ask the police to try to identify it. I find also the log of the noise incidents supports the landlord's evidence of cause to end this tenancy. Although the female tenant alleged that they had lived in the home for 4 years with no problems, I find this statement is inconsistent with the letter from her previous landlord detailing problems of smoking and cover-up plus difficulties of dealing with the tenants. I find the weight of the evidence is that the landlord has good cause to end the tenancy. The tenancy is ended and an Order of Possession is issued to the landlord effective August 31, 2013 as agreed by the parties.

I find insufficient evidence to support the tenants' claim for \$5,000 for harassment by the landlord. I find the weight of the evidence is that the landlord responded appropriately by informing them of other tenants' complaints about their behaviour and legally serving a Notice to End Tenancy when matters could not be resolved. While they may have felt constrained in their lifestyle, I find this is often the case where parties share a home and must try to accommodate each other's life style and this is not harassment by the landlord and not a matter for compensation.

For all of 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.

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 August 31, 2013 as agreed by the parties in the hearing.

I dismiss the other claims of the tenant in their entirety without leave to reapply and I find they are not entitled to recover their filing fee for this application.

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: August 07, 2013

Residential Tenancy Branch