



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Escort Investment Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause and recovery of the filing fee.

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

The Landlord stated in his direct testimony that he wished to end the tenancy and obtain an order of possession.

Issue(s) to be Decided

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

Background and Evidence

This Tenancy began on May 1, 2011 on a 6 month fixed term tenancy and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$630.00 payable on the 1st of each month and a security deposit of \$315.00 was paid.

Both parties agreed that the Landlord served a 1 month notice to end tenancy issued for cause upon the Tenant. Neither party submitted a copy of the 1 month notice to end tenancy. Both parties agreed that the 1 month notice to end tenancy issued for cause was dated September 27, 2013 showing an effective date of October 31, 2013. Both parties indicated that there were 4 reasons for cause selected. During the hearing, the

Landlord's Agent, A.D. withdrew the last two reasons for cause. The remaining two reasons for cause were confirmed by both parties.

- Tenant is repeatedly late paying rent

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another tenant or the landlord.

The Landlord states that the Tenant was late paying rent in February and August of 2013. The Landlord has provided copies of 10 day notices to end tenancy issued for unpaid rent for these two months. The Tenant has confirmed that they were late paying rent in August 2013.

The Landlord also states that complaints have been received from other Tenants regarding excessive noise late at night due to the Tenant's visitors to and from the rental building. The Tenant disputes these claims. The Landlord has submitted copies of a handwritten note from another Tenant describing the frequent traffic to and from the Tenant's rental unit late at night with doors opening and closing. The Landlord has also provided an email letter from another Tenant which describes responding to a broken glass noise that was thought to come from a vehicle window but was actually from the manager's window being broken.

Analysis

Residential Tenancy Branch Policy Guideline #38, states,
A landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late....Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Landlord has failed to provide sufficient evidence that the Tenant was repeatedly late paying rent as he has only provided two occasions in February and August of 2013. I find on this reason for cause that the Landlord has failed. This portion of the application is dismissed.

The Landlord has also stated that complaints of the Tenant receiving repeated late guests which disturb the other occupants and/or the Landlord. The Landlord's Agent, V.D. has stated that he received a complaint from the Tenant in #203 who has stated that he heard the sound of glass being broken in the early hours where he thought that a car window was being broken. The Tenant stated that he investigated and saw two

people between two cars and noticed that the Landlord's Caretaker's window was broken. The Landlord also relies on a written note which only states that the Tenants receive many visitors daily. I find that the Landlord has failed to provide sufficient evidence that the Tenants has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord has stated that there was excessive noise/disturbance of the other occupants, but has failed to provide any clear evidence that any interference or disturbance was caused by the Tenants. The Landlord has failed to establish his reasons for cause. The Tenant's Application to cancel the notice to end tenancy is granted. The notice dated September 27, 2013 is cancelled. The Tenancy shall continue.

The Tenant having been successful in the application is entitled to recovery of the \$50.00 filing fee. I order that the Tenant may withhold one-time \$50.00 from the next months rent upon receipt of this decision.

Conclusion

The Tenant's Application is granted. The notice dated September 27, 2013 is cancelled. The Tenancy shall continue. The Tenant may withhold one-time \$50.00 from the next months rent upon receipt of this decision to recover the filing fee.

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: November 19, 2013

Residential Tenancy Branch

