



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LeJeune Housing Society - LeJeune Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel a one-month Notice to End Tenancy that was given for cause.

Background and Evidence

On October 10, 2013 the landlords serve the tenant with the Notice to End Tenancy by registered mail, giving the following reasons for ending the tenancy:

- Tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbing other occupant or the landlord.
 - seriously jeopardize the health or safety or lawful right of another occupant or the landlord.

The landlord testified that:

- The applicant had been making frequent unreasonable noise complaints about the tenant who lives in the rental unit above her.
- Complaints have even been made at times when the tenant above was house sitting for someone else and had not even been living in the rental unit above.
- Complaints became so frequent that it caused extreme stress to the tenant in the rental unit above and was affecting her health.
- This has been an ongoing pattern with this tenant and in fact not only with the tenant that's living above her now but with complaints against the previous tenant.
- This tenant does not appear to be able to tolerate normal household noise and the frequent complaining has become an unreasonable disturbance of the other occupant, and has affected the other occupant's health to the point where she has had to consult her physician. (Doctors letter is attached).
- They conducted several noise tests in the suite above the applicant's and were not able to substantiate any of the applicant's claims.
- Due to all these complaints, on July 3, 2013, a letter was sent to the tenant by registered mail giving her 90 days to voluntarily vacate the rental unit and since she has failed to do so, a Notice to End Tenancy was served on her.

The applicant/tenant testified that:

- She has never actually confronted the upstairs tenant herself; all complaints were always made to management.
- She has not filed any complaints since June 7, 2013, and all previous complaints were in 2012.
- She now realizes that she cannot be filing complaints about normal household noises and should only file a complaint if there is loud partying or loud noise late at night.
- She had complained about noise from the tenant upstairs showering, however that was due to a problem with the shower itself and since the shower was repaired she no longer hears the noise from the shower.
- Even the letters of complaint, supplied as evidence by the landlord, are all from 2012, well before the Notice to End Tenancy was given in October of 2013.
- She believes she has complied with the landlord's requirement to refrain from any unreasonable complaining, and that this tenancy should be allowed to continue.

In response to the tenant's testimony the landlord testified that:

- They agree that there have been no complaints since July of 2013, however they had given the tenant 90 days notice to voluntarily vacate and she failed to do so, and that's why the Notice to End Tenancy was given in October 2013.

Analysis

It's my finding that at the time that the Notice to End Tenancy was given; the tenant was not unreasonably disturbing another occupant of the rental property.

Both the landlord and the tenant agree that the applicant/tenant has filed no noise complaints of any kind since July 2013, and although I agree that previously there had been numerous unreasonable complaints, the tenant has since complied with the landlords request to refrain from complaining unreasonably.

It's my decision therefore that at the time the Notice to End Tenancy was given the landlord did not have reasonable grounds for ending this tenancy.

This decision does not stop the landlord from serving a Notice to End Tenancy in the future, if the applicant starts making numerous unreasonable complaints once again.

Conclusion

It's my decision that the one-month Notice to End Tenancy dated October 10, 2013 is hereby canceled and this tenancy continues.

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: December 03, 2013

Residential Tenancy Branch

