



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant to cancel a Notice to End Tenancy for Cause.

The tenant and both landlords participated in the teleconference hearing and all gave affirmed evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The landlord gave evidence that the tenant is his sister, and the tenancy came into being when the tenant loaned him some money to purchase the house. They agreed that the loan would be considered rent paid in advance and the tenant would live in the house rent-free for a period of time. The parties agree that the prepaid rent is now exhausted and the tenant is obligated to pay \$685.00 per month in rent payable in advance on the first day of the month.

The parties agree that the landlord served the tenant with a Notice to End Tenancy for Cause (the "Notice") by posting the Notice on the tenant's door on January 6, 2014. The Notice states the reason for ending the tenancy is "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord".

The tenant provided a copy of the Notice which is not signed or dated by the landlord and which has no move-out date specified. The tenant called a witness who gave affirmed evidence that the unsigned Notice is the Notice the tenant received.

The landlord provided a copy of the Notice which is otherwise identical to the Notice provided by the tenant but which is signed and dated by the landlord and which specifies a move-out date of February 6, 2014. The landlord said he believes he signed and dated the Notice and filled in the move-out date before providing it to the tenant.

The landlord gave evidence that the tenant has caused significant interference and/or unreasonable disturbance in three ways:

1. The former upstairs tenant moved out because of noise from the tenant in this application.
2. The current tenants have twice approached the landlord about noise from the tenant in this application.
3. The tenant has sent numerous nasty emails to the landlords.

The landlord provided a copy of a letter from a previous upstairs tenant which states that the tenant in this application was the reason that she left her tenancy. The previous tenant states the tenant was always fighting with her boyfriend and was verbally abusive to the previous tenant.

The tenant gave evidence that the previous upstairs tenant wanted her to participate in a fundraising project but she refused. Afterwards, the upstairs tenant started complaining about everything. The tenant's evidence is that there is a minimal sound barrier between the units but she only makes "everyday noises".

The landlord gave evidence that he has twice received noise complaints regarding the tenant from the current upstairs tenant, in approximately October 2013 and January 2014. The current upstairs tenant was called as a witness by the tenant, and the witness provided affirmed evidence. She said that she had expressed concern to the landlord about noise from the tenant fighting with her boyfriend, however the boyfriend has now moved out and she has had no concerns about noise in December 2013 or January 2014.

The landlord provided a copy of some emails he received from the tenant including one dated December 31 which reads in part:

"Your so called eviction has nothing to do with reconciliation. You just want more rent and feel that I was ripping you off all this time. YOU set the price. YOU got all the benefits of loan..FUCK [landlord's name] why didn't you just steal everything I have and toss me down the mountain side.

GREED has consumed you and now you are rotting from the inside out with it. No worries it YOU who have to live with YOU> I have done no wrong keep all that yelling for your beloved wife who you wanted to divorce a year ago.. I am sure there is not enough booze or dope that will silence the rage within you.. keep it up and you will hit an early grave.”

The landlords gave evidence that the tenant sent them emails which were deeply hurtful and in which she referred to the landlords as “stupid”, “a loser”, “a drunk”, and “a pothead”. Their evidence was that the emails were personal attacks and that they received offensive emails for months, sometimes as many as 3 or 4 in one day. The landlords’ evidence is that some of the offensive emails were too personal to put into evidence.

The landlord also gave evidence that when he went to the rental unit on December 29, 2013 to repair the showerhead, the tenant yelled at him, attacked his religion, and behaved aggressively.

The tenant agrees that she was angry at times when she sent emails. She did not dispute the content and frequency of emails alleged by the landlord. She said she believes the problem between her and the landlords stems from disagreement about money and how her loan to the landlords would be repaid.

The landlord agreed that, if the Notice is upheld, the move-out date may be changed to March 31, 2014 to give the tenant more time to make new arrangements.

Analysis

I find that the tenant received the Notice that was not signed or dated by the landlord and which does not specify a move-out date. She could not have provided the Notice in that form in her evidence if she did not receive it in that form. Since the Notice was not signed or dated and does not specify a move-out date, it is not in compliance with Section 52 of the Act.

However, Section 68 allows me to amend the Notice if I am satisfied that (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and (b) in the circumstances, it is reasonable to amend the notice. In this case, the tenant knew the identities of the landlords. As well, she would have known that the Notice was filled in on or before January 6, 2014 when she received it. The tenant also should have been aware from the title of the Notice “1 Month Notice to End Tenancy for Cause” that the move-out date was at least one month from the date she

received the Notice. I find that there is no prejudice to the tenant by amending the Notice to specify a move-out date of February 6, 2014 and I order that the Notice is so amended.

During the hearing, the landlord advised that he would allow the tenant to stay until March 31, 2014. I find that the landlord has amended the Notice to specify a move-out date of March 31, 2014.

I find that the landlord has proven that cause exists to end the tenancy, for two reasons. First, the landlords provided evidence that a previous tenant moved out because of noise from the tenant in this application. Secondly, the landlords have provided both oral evidence and documentary evidence that the tenant in this application sent them offensive emails. It is not relevant that a family relationship exists between the landlords and the tenant. I accept the landlords' evidence regarding the content and frequency of the emails from the tenant, and I find that the emails constitute an unreasonable disturbance of the landlord.

I find that the landlord has proven that the tenant unreasonably disturbed both another occupant and the landlord. Consequently, I dismiss the tenant's application to cancel the Notice.

Conclusion

The tenant's application is dismissed. The tenancy shall end at 1 p.m. on March 31, 2014.

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: February 3, 2014

Residential Tenancy Branch

