



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenants on February 16, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on February 25, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated February 15, 2014?

Background and Evidence

The tenancy began on May 1, 2013. The tenancy agreement provided that the tenant(s) would pay rent of \$875 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$437.50 at the start of the tenancy.

The agent for the landlord testified that the landlord's husband and the person who dealt with the tenancy matters has been hospitalized with a serious illness and is not available to give evidence.

The two witnesses who testified on behalf of the landlord stated the tenants have caused an excessive amount of noise during the evening and night hours. The noise includes the following:

- Sounds from walking in shoes on the hardwood floor
- Loud voices
- Dishes clattering
- Doors slamming

The noise has been excessive. They have called the non emergency police telephone number approximately 20 times. They have also told the landlord a number of times. They testified the respondent's living schedule is significantly different than the rest of the building. They are up when the rest of the building is sleeping. Monday and Tuesday are usually quiet. However, they are disturbed on a regular basis from Wednesdays to Saturdays. The noise is oppressive.

The respondents testified they were aware of complaints from the upstairs tenants around the middle of May 2013 and they changed their life style. They thought there was no problem until late September when the upstairs tenants complained. Again they were carefully and were unaware of the complaints of the upstairs tenant until February 2014. The male respondent testified he is in his 50's and walks with the aid of a cane. The female tenant testified she walks heavy on her feet but has attempted to change her walking form. The female respondent further testified she is in bed around 11:00 p.m.

There have been no written warnings. Further, due to the illness of the landlord's husband there has been no testimony that would dispute the respondents' testimony that they have not been much notice of the complaints.

Analysis

After discussion with the parties the landlord stated that he was prepared to withdraw the notice at this time and if there are further problems he intends to document the complaints, give the respondent notice and served a new Notice to End Tenancy.

As a result I ordered the Notice to End Tenancy dated February 15, 2014 be cancelled as withdrawn. I have not made any determinations on the merits. The landlord retains the right that should there be further difficulties the landlord can serve a new Notice to End Tenancy that includes the events on which this Notice is based. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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: March 21, 2014

Residential Tenancy Branch

