



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mole Hill Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application to cancel a notice to end tenancy for cause. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties and their witnesses were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the notice to end tenancy for cause valid?

Background and Evidence

The tenancy began on December 1, 2010. The rental unit is an apartment in a multi-unit wood-frame designated heritage building that is over 100 years old. The parties agreed that because of the age of the building, there are noise issues.

On March 14, 2014 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenant had significantly interfered with or unreasonably disturbed another occupant.

Landlord's Evidence

The landlord stated that at they informed the tenant when she entered into the tenancy agreement that because of the age of the building it is necessary to take appropriate steps to not disturb other tenants.

The landlord stated that since the beginning of the tenancy they have received complaints from other tenants about the tenant making too much noise.

The landlord stated that they hired an independent third party to review the files of the tenant and the two occupants who were complaining about the tenant and provide recommendations. In a report dated February 26, 2014, the contractor recommended that the landlord clearly communicate to the tenant when she is in violation of her rental agreement and inform her that there will be consequences for such violations. The landlord stated that they met with the tenant on February 27, 2014 to advise the tenant that there had been "a sustained continual pattern of complaints about noise" from the tenant's unit, and if the landlord received further complaints, the landlord may act to end the tenancy for cause.

The landlord stated that on March 12, 2014 the landlord received another complaint about the tenant's dog barking late at night. The landlord then made the determination that it was appropriate to serve the tenant with a notice to end tenancy for cause.

The landlord stated that when they receive written noise complaints, if the noise is a problem with the building they do what they can to mitigate the noise, but they are limited by the building's heritage designation and codes. If the noise appears to be caused by a tenant, the landlord brings the complaints to the notice of the tenant who appears to be causing the noise. The landlord also stated that they "go with the facts given" in a written complaint, and whether the complaint is right or wrong is not the landlord's problem. The landlord stated that they attempt to arrange mediation between tenants when there is a problem. The landlord acknowledged that these were the steps they took in dealing with this tenant, and they did not do any direct investigation of the noise complaints, such as going into the complaining tenant's unit or another adjacent unit to listen for excessive noise caused by the tenant.

Tenant's Response

The tenant denied making excessive noise. She stated that she does not use a heater, fan, stereo or TV. The tenant submitted that the landlord did not properly investigate the complaints, as they never came to her unit or went to the unit above.

The tenant's witness lives in a unit beside the tenant, and he stated that he does not hear noise from the tenant's unit at all. The tenant's witness stated that before the tenant moved into her unit, a friend of the witness occupied that unit. The witness' friend also received notes from the tenant residing above the rental unit.

The tenant submitted that the tenant in the unit above her may have a particular sensitivity to noise. The tenant stated that the only other complainant has had a history of animosity toward the tenant.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find that the notice to end tenancy is not valid.

The landlord did not investigate the complaints against the tenant, and they could not therefore provide sufficient evidence to establish that the tenant did in fact cause the alleged disturbances. It is not appropriate for a landlord to expect tenants to resolve matters between themselves; it is the landlord's responsibility under the Act to ensure that tenants have quiet enjoyment of their unit.

As the landlord has failed to prove the alleged cause set out on the notice, I cancel the notice to end tenancy.

Conclusion

I cancel the notice to end tenancy dated March 14, 2014, with the effect that the tenancy continues until such time as it is ended in accordance with the Act.

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: May 7, 2014

Residential Tenancy Branch

