



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant to cancel a notice to end tenancy for cause.

The parties named in the Application all appeared for the hearing and no issues in relation to the service of the Tenant's Application and the Notice of Hearing documents were raised by the parties. As a result, I determined that the Tenant had served the Landlords with the required documentation for this hearing in accordance with section 89(1) (c) of the *Residential Tenancy Act* (the "Act").

Both parties provided affirmed testimony during the hearing. However, the only written evidence submitted prior to the hearing was by the Tenant.

Issue(s) to be Decided

Has the Tenant established that the notice to end tenancy for cause ought to be cancelled?

Background and Evidence

The parties agreed that this month to month tenancy began on July 1, 2013 for a basement suite where the Landlords live separately on the floor above the Tenant. Rent in the amount of \$750.00 is payable by the Tenant to the Landlords on the first day of each month. At the start of the tenancy the Tenant paid the Landlord a security deposit in the amount of \$375.00 but no written tenancy agreement was completed between the parties.

The male Landlord testified that the Tenant plays his music loud in the mornings starting from 6:00 am and this is causing a disturbance to him, his wife and their child. The male

Landlord testified that on two occasions he knocked on the Tenant's door while he was playing the music and asked him to turn it down. However, the Tenant has not turned it down and the Tenant continues to play loud music in the mornings.

The female Tenant testified that their lack of sleep is beginning to affect their health which is manifesting itself in medical issues.

The Landlord testified that he sent the Tenant an e-mail explaining that if he continued to play his music loud then he should leave; however, the Tenant requested proper notice to end his tenancy.

As a result, the Landlords served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") by attaching it to the Tenant's door on April 3, 2014. The Notice, which was provided as evidence for the hearing, shows the expected date of vacancy of May 5, 2014 and the reason for ending the tenancy is because the Tenant has significantly interfered with or unreasonably disturbed the Landlords and seriously jeopardized the health or safety or lawful right of the Landlords.

The Tenant acknowledged receipt of the Notice on April 4, 2014 on the door of his rental unit.

The Tenant disputed the Landlords' testimony and submitted that he plays his music in the mornings at a reasonable level. The Tenant testified that he has been playing his music since he moved into the rental suite at the same volume and the Landlords did not have any issue with this until several months into the tenancy.

The Tenant acknowledged that the Landlord asked him to turn his music down and the Tenant turned it down from level 15 to level 13 but this still seems to be affecting the Landlords.

Analysis

Firstly, I find that the Notice was issued to the Tenant in the correct form and contained the required contents as required by the Act and that it was served and received by the Tenant on April 4, 2014. As a result, I find that the Tenant disputed the Notice within the time limits afforded under the section 47(4) of the Act.

When a Landlord issues a Tenant with a Notice for the reasons in this case, the Landlord bears the burden of proof in showing the reasons why the Notice was issued

and must supply sufficient evidence to prove the reasons the Notice was issued to the Tenant and that it should be upheld.

In this case, I find that the Landlords have not provided sufficient supporting evidence to substantiate the reasons why the Notice was issued and rely solely on affirmed testimony as evidence for this case. The verbal testimony provided by the Landlords regarding the reason for the Notice is disputed by the Tenant and therefore this result in one party's word against the other.

The lack of any supporting evidence, such as audio recordings or expert/witness statements of the noise levels and evidence to suggest the music volume is unreasonable, does not convince me that the Landlords have met the burden of proof in this case.

Therefore, I find that the Landlords' evidence is no more compelling than the Tenant's evidence and the Landlords have not met the burden of proof in this case.

Conclusion

For the reasons set out above, I cancel the Notice dated April 4, 2014 and the tenancy will continue until it is ended in accordance with the Act.

However, I encouraged the parties during the hearing to work with each other to identify acceptable music levels to both parties in order to promote a successful tenancy.

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: June 03, 2014

Residential Tenancy Branch

