



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, OPC, OPB

Introduction

This hearing dealt with cross applications. The landlord is seeking order of possession. The tenant is seeking to have a notice to end tenancy set aside and a monetary order. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about March 1, 2012. Rent in the amount of \$875.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$312.00.

The landlord gave the following testimony:

The landlord stated that he received a complaint about the subject tenant. The landlord stated that the tenant was banging on the walls of her unit. The landlord stated that he has received other complaints about the subject tenant including; she douses the tenants below her with water when they are on her deck and that she coordinated petitions to have other tenants evicted. The landlord stated that he had issued a One

Month Notice to End Tenancy for Cause on April 22, 2014 with an effective date of May 31, 2014 and the landlord requests an order of possession.

The tenants counsel submitted the following:

Counsel submitted that the landlord has failed to provide sufficient evidence to have the tenancy end. Counsel submitted that the validity of the landlords' documentation is questionable as the letters of complaint are all dated within a six day span covering a number of issues. Counsel stated that prior to that date the landlord had not submitted any warning letters to the tenant. Counsel submitted that the tenant has made complaints to the landlord about the noisy tenants next to her which he has ignored. Counsel submitted that the landlord is attempting to avoid his obligation in dealing with the subject tenants' complaints. Counsel submitted that the subject tenant is also entitled to quiet enjoyment and that due to her inquiries to the landlord, she has become a subject of this hearing. Counsel submitted that the landlords' suggestion for the tenant to change jobs or move out is inappropriate.

Analysis

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility to provide sufficient proof to support the issuance of that notice. The landlord has issued the notice on the following three grounds:

1. The tenant has significantly interfered with or unreasonably disturbed another occupant or landlord.
2. The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well being of another occupant or the landlord
3. The tenant is in breach of a material term of the tenancy agreement what was not corrected within a reasonable time after written notice to do so.

The landlord has not been able to satisfy me on any of the grounds applied for. The landlord did not submit sufficient evidence to illustrate that the tenant had "significantly

interfered with or unreasonably disturbed" other tenants or the landlord. I accept that the tenant and landlord have some issues but not to the extent that would warrant the termination of the tenancy. On ground # 2 the landlord was silent as to what illegal activity the tenant was engaged in; I do not give that allegation any weight. As for ground #3 the breach letter given is extremely vague and does not outline what the issue is and what the remedy is, I do not give that allegation any weight. Based on all of the above I find that the One Month Notice to End Tenancy for Cause dated April 22, 2014 with an effective date of May 31, 2014 is set aside. The notice is of no effect or force. The tenancy continues on the same terms and conditions as before.

The tenant has made an application for the recovery of moving fees if she was to move and for legal fees. As the tenancy remains in effect the claim for moving fees is dismissed. The Act does not prescribe for the recovery of legal fees as those are costs when one is litigating their case; accordingly I dismiss the claim for legal fees.

As neither party was completely successful in their application I decline to make a finding in the recovery of their filing fees and each party must bear that cost.

Conclusion

The One Month Notice to End Tenancy for Cause dated April 22, 2014 with an effective date of May 31, 2014 is set aside.

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: July 2, 2014

Residential Tenancy Branch

