



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DGC HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Preliminary Issues

All parties confirmed the respondent named on the Tenants' application was an employee or Agent of the property management company who is the corporate Landlord. They also confirmed the correct spelling of the street address for the rental unit. Accordingly, the style of cause was amended to include the corporate Landlord's name and correct the spelling of the rental unit address, in accordance with section 64 (3)(c) of the *Act*.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on December 9, 2014, to cancel a Notice to end tenancy issued for Cause and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Owner and both Tenants. Each party gave affirmed testimony and confirmed receipt of documentary evidence served by the Landlord.

The Tenants confirmed they had not served the Landlord with copies of the photographs they submitted to the Residential Tenancy Branch (RTB); however their documents were served to both the RTB and the Landlord, which the Landlord confirmed receiving.

Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlords have not received copies of the Tenants' photographic evidence, I find that those photographs cannot be considered in my decision. I did however consider the other evidence and the oral testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued December 1, 2014 be upheld or cancelled?

Background and Evidence

The undisputed evidence was that the Tenants entered into a month to month tenancy that began on August 22, 2014. Rent of \$800.00 is due on or before the first of each month and on July 22, 2014 the Tenants paid \$400.00 as the security deposit.

The Landlord testified that the rental unit is a basement suite located in a side-by-side duplex that had been rented out as a four-plex that has two upper rental units and two lower rental units. The Landlord has been employed to manage this property since August 2011 and during her employment there have been a total of four tenancies for this basement suite. At the time she was hired there was an existing tenancy which consisted of an adult couple who occupied the basement suite for three months after she was hired. Then there was a single mom and young daughter, approximately six years old, who occupied the basement suite for just over one year. The third tenancy was an adult couple with an infant child who occupied the basement suite for less than one year. The current Tenants are an adult couple with a five year old boy.

The Landlord submitted evidence that the tenant directly above these Tenants has been complaining about noise and marihuana smoke coming from these Tenants. The Landlord stated that the upper tenant has been a long term tenant of just over four years and occupies the unit with her two young-adult sons. She stated that she does not think the upper tenant works outside of the home and the Landlord believes the upper tenant may be continuing her education and studying at home.

The Landlord stated that shortly after these Tenants moved in she received a verbal complaint from the upper tenant about noise. Since then the upper tenant has sent the Landlord complaints, by email, which have involved overhearing the Tenants discussing setting up a playroom or daycare in the garage; someone smoking marihuana; smoking; and domestic arguments, and abusive language being used towards the Tenants' child. The Landlord argued that the upper tenant has also submitted to the Landlord a copy of a calendar where she wrote when the Tenants have done laundry, had a fight, and when she smelled cigarette and marihuana smoke. The Landlord stated that the upper tenant appeared at the Landlord's office in tears, on November 13, 2014, accusing the Landlord of not doing her due diligence in checking out these Tenants before renting to them.

The Landlord adduced that the upper tenant has recently called the police for an issue that was unfounded. The Landlord stated that they are concerned that this rental unit will be designated as a problem residence if they do not take action, so they decided to evict the lower Tenants.

The Landlord submitted evidence that: they spoke with the Tenants about the complaints on October 1, 2014; a formal complaint letter was issued to the Tenants October 20, 2014; a written final notice was issued November 3, 2014; and on December 1, 2014 a 1 Month Notice to end tenant was issued to the Tenants. The Landlord confirmed that all those notices were based solely on the upper tenant's complaints.

The Notice was issued pursuant to Section 47 of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The Tenants testified that after the first verbal complaint they apologized to the upper tenant and spoke with their 5 year old son about noise levels, in their attempts to try and get along with the upper tenant. They noted that all of the complaints involve regular daytime living or talking noise and only one complaint involved after hour noise that occurred right around 11:00 p.m. The Tenants pointed to the calendar provided in the Landlord's evidence and argued that the dates do not match up to the events or the upper tenant's written complaints.

The Tenants argued that they feel the upper tenant's complaints are malicious as in some instances her complaints involve dates and times when they were not even home. They admitted that there was one occasion where their guest smoked marihuana in her car that was parked in the driveway. They noted that the upper tenant's two sons were at home at the time and they told their mother when she returned. They argued that the upper tenant was not even home at the time so she could not have witnessed those events first hand.

The Tenants argued that they have never smoked inside the rental unit and that tenants from the other units could testify that they always see them smoking out on the driveway. The Tenants noted that the Landlord has never attended their rental unit to investigate these complaints; rather, she is taking the word of the upper tenant over their word.

The Tenants spoke about incidents when they mistakenly turned on the washing machine buzzer and the upper tenant became very aggressive yelling and swearing at them for creating noise. She also yelled at them that she was “queen bee” and that she could get them evicted. Then also spoke about a time when they opened their door to enter the shared laundry room and the upper tenant was there and had jumped away from their door startled, which led them to believe she was leaning against their door to listen in on them. They argued that the upper tenant has created a personal grudge against them and is going to have them removed at any cost.

The Owner submitted that they have no animosity against either set of tenants and they are aware that the upper tenant is very emotional. However, they do have to take action as landlords.

Upon review of the Notice the Landlord submitted that the illegal activities involve the one complaint about marihuana smoke on the property. The other reason involves the noise and other complaints received from the upper tenant, as supported by the documents provided in their evidence.

In support of the Notice, the Landlord pointed to the tenancy agreement addendum #4 which stipulates as follows:

The tenant(s) agree to comply with smoking restrictions, and that smoking is strictly prohibited inside the home or suite and in any area on the premises that affects the comfort and/or health of other tenants.

The Landlord stated that this is nothing more than a situation of constant complaining between two tenants, which in her mind is “getting silly” and is now involving the police for unnecessary complaints. They did not issue an eviction notice to the upper tenant; rather, they chose to evict the lower Tenants after considering that the upper tenant has been a long term tenant and they had never received complaints from any of their tenants prior to this situation.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 47(1)(e)(ii) of the *Act* stipulates that a landlord may end a tenancy if the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has,

or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The undisputed evidence is that on one occasion, the Tenants' guest smoked marihuana in a car parked in the Tenants' driveway. There was no evidence submitted to support or refute that their guest may have the legal right to possess and smoke marihuana. That being said I have made no decision on whether the Tenants' guest had the right to legally possess marijuana, at the time it was smoked inside the car at the rental unit.

Residential Tenancy Branch guidelines suggest that the smoking of marihuana should not be grounds for ending this tenancy unless it has been established that smoking marihuana has had a significant impact on other occupants in the residential complex or on the landlord's property. I find this guideline to be reasonable.

Upon review of the evidence before me, I find that the Landlord has submitted insufficient evidence to show that the onetime the Tenants' guest smoked marihuana in a car in the driveway had adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or jeopardized a lawful right or interest of another occupant or the landlord. On this basis, I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(e)(ii) of the *Act*.

In reaching the conclusion that the Landlord has submitted insufficient evidence to show that the smoking of marihuana in a car in the driveway had adversely affected the quiet enjoyment, security, safety, or physical well-being of another occupant or jeopardized a lawful right or interest of another occupant or the landlord, I was heavily influenced by the fact that the upper tenant was not home at the time this event occurred and that it occurred inside a car and not inside the rental unit. I find the upper tenant had expressed numerous complaints about these Tenants, some of which seem decidedly more significant than the smoking of marihuana in a car, such as noise disturbances.

In addition to the report of noise complaints, I find that this upper tenant has expressed concerns regarding these Tenants that appear relatively trivial. I specifically note that the upper tenant has expressed concerns that she "overhead" the Tenants talking about setting up a playroom in the garage, yet there is no evidence to suggest such an action would be in breach of the tenancy. I also note that the upper tenant's concerns that the Tenants are making noise primarily during regular daytime hours which appear to be more of concern about the upper tenant's ability to live in a multi-family building where other occupants do not leave their home during the day. It is possible that the upper tenant is seeking a perfectly quiet environment where she can study, rather than these issues involving disturbances that would be in breach of the *Act*. These complaints and the recent involvement of the police cause me to question whether the upper tenant has legitimate complaints or whether the upper tenant is complaining simply because she dislikes these Tenants.

I also note that the Tenants have submitted that they suspect the upper tenant has been in the common laundry room area attempting to listen into their rental unit, given her

recent reaction when they opened their door to enter the laundry room. I find that submission causes me to question the credibility of the upper tenant's complaints and to question whether the upper tenant is interfering with the quiet enjoyment of these Tenants.

Given the aforementioned concerns about the credibility of the upper tenant's complaints, I find that it would be inappropriate to end this tenancy without some additional evidence that corroborates the noise complaints. Corroborating evidence, in my view, would include statements from at least one other independent party, such as a tenant from one of the other two rental units in this complex, to substantiate the presence of noise or smoking that is breaching their right to the quiet enjoyment of the rental unit. In reaching the conclusion that it would be inappropriate to end this tenancy on the basis of the upper tenant's written complaints, I was further influenced by the absence of complaints from any other tenants who occupy this building.

Based on the above, on the grounds that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, I find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*. Accordingly, the Landlord has provided insufficient evidence to support the reasons listed on the 1 Month Notice to end this tenancy.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to section 47 of the *Act*, I hereby set aside the 1 Month Notice to End Tenancy, dated December 1, 2014, and I order that this tenancy continue until it is ended in accordance with the *Act*.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee. This one time award of \$50.00 may be deducted from the Tenants' next rent payment.

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: January 05, 2015

Residential Tenancy Branch

