



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

This Hearing dealt with the Tenants' application filed December 10, 2014, to cancel a *One Month Notice to End Tenancy for Cause* issued December 1, 2014 (the Notice). The parties gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The Landlord acknowledged receipt of the Notice of Hearing documents and the Tenants' documentary evidence by registered mail.

Issue to be Decided

- Should the Notice be cancelled?

Background and Evidence

The rental property is a duplex. One side of the duplex is occupied by another tenant. The Tenants' side of the duplex is divided into two separate suites. The Tenants live in the upper suite. There is currently no one occupying the lower suite.

This tenancy started on May 15, 2013. Rent is due on the first day of each month.

The Landlord testified that the Tenants were late paying rent for November and December, 2014.

The Tenants acknowledged being late paying the rent, but submitted that they had paid the late fees.

The Landlord stated that the Tenants were significantly interfering with or unreasonably disturbing the other occupants by playing loud music and jumping on the floor after 9:00 p.m. He stated that some of the other occupants were good tenants, but that they moved out because of the noise and because the Tenants parked in their parking space.

The Tenants testified that the first downstairs occupant was evicted for not paying rent for two months. They stated that new occupants moved into the downstairs suite on August 1, 2014, but were evicted on November 7, 2014, for running a meth lab.

The Tenants stated that they didn't play their music past 9:00 p.m. and that they had an agreement with the occupant in the other side of the duplex (KE). The Tenants stated that KE had no complaints about noise. The Tenants provided a letter from KE in evidence. The Tenants submitted that the lower suite was not rented because it was not habitable. The Tenants stated that they parked where they had always parked since they moved into the rental unit. The Tenants testified that they had not received any warning from the Landlord before they were served with the Notice.

The Tenants testified that this was the third notice to end the tenancy that the Landlord had issued against them. They stated that the other two notices were cancelled because the Landlord did not sign into the hearings.

Analysis

When a tenant seeks to cancel a notice to end a tenancy, it is a reverse onus situation. In other words, the onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons noted on the notice.

In this case, the Notice indicates the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

In this case, I find that the Landlord has not provided sufficient evidence to support the Notice, for the following reasons:

1. The Residential Tenancy Branch Policy Guidelines provide that at least three late payments constitute "repeated late" payments. Rent is due on the first day of each month. Tenants have until midnight on the date that rent is due to pay the

rent. The Notice was issued on December 1, 2014, and therefore I find that on the date of issue, the Tenants had been late paying their rent only one time.

2. The Landlord did not provide documentation or witness testimony to support his allegation that the Tenants were disturbing the other occupants. The Tenants provided a letter from KE, which states, in part, "This letter is to clarify that I haven't had any problem concerning loud music coming from [the rental unit]..... In regards to the parking, there shouldn't be any problem. [The Tenants] have the front two spots and the downstairs occupant has the back two spots."
3. The Landlord stated that he was unaware of any "illegal activity" that the Tenants were engaging in.

For the reasons set out above, I find that the Notice is not a valid notice to end the tenancy and it is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

Conclusion

The Notice to End Tenancy issued December 1, 2014, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of 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: January 20, 2015

Residential Tenancy Branch