



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel the One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served in person to the landlord's agent on February 10, 2015.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The tenants testified that this tenancy started on January 01, 2011. Rent for this unit is now \$800.00 per month due on the last day of each month.

The tenants testified that there was an incident after the tenants had friends over for the evening in January, 2015. When their friends left the tenants' unit at around 2.00 a.m. the tenants assumed these friends had left the building; however, the friends had reached the lobby and found one of them had left something in the tenants' unit. They came back up in the elevator but went to the wrong floor. As they passed the building manager's unit he came out and asked them where they were going. The tenants' friends told the building manager they were coming back to the tenants' unit. The tenants agreed their female friend had been drinking. Later the building manager came to the tenants' unit and informed them that their friends had woken the whole building up. The next day the building manager served the tenants with a One Month Notice to End Tenancy for cause. This Notice was served on January 27, 2015 in person.

The tenants have provided a copy of the Notice in documentary evidence. The Notice has an effective date of February 28, 2015 and states that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonable disturbed another occupant or the landlord.

The tenants testified that the building manager then went on a campaign to solicit complaints from other tenants about being disturbed by the tenants. The tenants testified that they asked other tenants if they had been disturbed and were told that they had not. The tenants testified that they have never been given a warning letter from the landlord about any disturbances. The tenants seek to have the Notice cancelled and request to recover the filing fee of \$50.00 from the landlord.

Analysis

The landlord' agent did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of the landlord or a representative of the landlord, I have carefully considered the tenants' documentary evidence and testimony before me.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord does not provide any evidence to satisfy the burden of proof and the tenant disputes the Notice then I have no evidence to support the reason given on the Notice.

Consequently, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated, January 27, 2015 is cancelled and the tenancy will continue.

As the tenants have been successful in setting aside the Notice, they are entitled to recover the **\$50.00** filing fee for this application and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: March 09, 2015

Residential Tenancy Branch

