



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order. The tenant applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

On April 22, 2015, the tenant amended his application to include a monetary claim. The landlord stated that she did not receive the amendment in a timely manner.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order for compensation.

As the amended portion of the tenant's application is unrelated to the main section which is to cancel the one month notice and in addition was not served in a timely manner, I dismiss the monetary portion of the tenant's claim with leave to reapply.

At the start of the hearing, the landlord informed me that she wished to withdraw the monetary portion of her application. Accordingly this hearing only dealt with the landlord's application for an order of possession and the tenant's application to cancel the notice to end tenancy.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy at this unit started on March 01, 2015 for a fixed term of six months. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs and rents bedrooms to foreign students.

The landlord stated that on March 08, 2015, very early in the morning she sent the tenant a text message asking the tenant to keep the noise levels down. Later that day, the tenant played his guitar outside the rental unit, in the yard, around 1:00pm and the landlord sent him another message which stated that the tenant had not informed her that he played an instrument or asked her if it was ok to play the instrument. The landlord also asked that the tenant observe quiet time from 11:00pm

The next incident occurred in the early hours of March 14, 2015, at 12:58 a.m. at which time, the landlord sent the tenant a text message saying "*Trying to sleep up here*".

On March 19, 2015, the landlord served the tenants with a notice to end tenancy for cause. The reasons for the notice were that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant continues to create noise disturbances. The tenant testified that he sometimes watched a movie at night and usually had a conversation with the co tenant. The tenant argued that the landlord was being unreasonable by expecting him to not watch television or have a conversation.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord

Based on all the evidence before me and the sworn testimony of both parties, I find that the landlord's testimony consisted of noise disturbances associated with normal every day activities.

Since this is a two level home with other occupants upstairs, I find that the landlord should expect noise disturbances caused by movements and every day activities of the occupants of the home.

I find that the landlord has not proven that the noise disturbances were deliberate on the part of the tenant and were intended to disturb the landlord.

I find that the landlord may get disturbed by the activities of the residents downstairs, but this does not constitute a basis for a notice to end tenancy.

However, the landlord's request for quiet time between 11:00 pm and 7:00 am is reasonable and the tenant would be wise to refrain from giving the landlord and the other occupants of the house, reason to complain about the noise disturbances. The tenant would also be wise to refrain from playing his musical instrument during quiet times.

I find it timely to put the tenants on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

While I accept the landlord's evidence that the tenant created some noise disturbances, I find that the landlord has not proven that the tenant significantly disturbed her or the other occupants of the home. Therefore, the landlord must bear the cost of filing her application. The notice is set aside and the tenant is entitled to the recovery of the filing fee. The tenants may make a onetime deduction of \$50.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

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: May 07, 2015

Residential Tenancy Branch