



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was originally convened on June 25, 2015 via teleconference and was attended by one of the tenants. The hearing was reconvened on September 1, 2015 and was attended by one of the tenants; the landlord; and her witness. The tenant had identified a witness to be called into the hearing but when called there was no answer and no testimony from this witness was heard.

As a result of service issues, I granted the tenants an adjournment to allow the tenants additional time to re-serve the landlord with notice of these proceedings as outlined in the Interim Decision written by me on June 25, 2015.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on May 15, 2013 as a month to month tenancy for a current monthly rent of \$950.00 with a security deposit of \$575.00 paid. The parties confirm that a written tenancy agreement was never signed by the parties. The landlord asserts that rent is due on the 1st of each month but the tenant submits that rent is due on the 15th of each month.

The landlord acknowledged that her usual practice is to collect rent from all of the tenants on the residential property by attending the property on the 1st of each month.

She states that repeatedly she cannot contact the tenants on or shortly after the 1st of each month. She states that they do pay the rent but usually it is as late as the 4 or 5 of each month and sometimes later.

The tenant submits that the landlord has provided no contact information to them and they do not know where to take rent if the landlord does not show up to pick up the rent when it is due. The tenants have submitted copies of several receipts for rent payments with several dated for the 4th or 5th of each respective month.

The landlord also submits that she had received complaints from two other tenancies in the residential property regarding the tenants disturbing these other occupants in the residential property. She states that in case the tenant could no longer deal with the disturbances and ended his tenancy. The landlord provided no evidence of any complaints from this tenant and he did not attend the hearing as witness.

The landlord did provide a complaint letter, dated October 20, 2014 from an occupant in the residential property who did attend the hearing as a witness. The complaint letter stipulated that the tenants were using the washing machine at all hours including 11:00 p.m.; 12:00 a.m. and sometimes 2:00 a.m.

The tenant and the witness agreed that they had spoken about these disturbances. The tenant testified that he had agreed with the witness to restrict use of the laundry to no later than 11:00 p.m. on weeknights and no later than 11:30 p.m. on weekend nights. The witness stated they had agreed to not later than 9:30.

The witness also testified that in addition to the laundry they sometimes hear noises going on in the kitchen because the kitchen is directly above a section of their rental unit. The witness suggested they can hear items drop to the floor.

The landlord and the tenant confirmed that they did discuss the complaint of the witness but that the landlord did not provide the tenant with any written warnings regarding impacts to the tenancy should the disturbances continue.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent; or
- b) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord has the burden of proving they have cause to end the tenancy. In regards to the landlord's claim that the tenant has been repeatedly late paying rent the burden of

proving when rent is due is predicated on the date that rent is due each month that was agreed to at the start of the tenancy.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that he must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of a tenancy agreement or any other evidence to confirm the rent amount was due on the 1st of each month. As the tenant states that the agreed upon date for rent was the 15th of the month I find the landlord has failed to establish rent is due on the 1st of each month.

As a result, and in conjunction with the dates on the rent receipts submitted into evidence I find the tenants have not been repeatedly late paying rent. I find, therefore, the landlord cannot rely on this as a cause to end the tenancy.

In regard to the landlord's assertion that the tenant has unreasonably disturbed other occupants I find that the only unreasonable disturbance raised by the landlord is the late night laundry.

While I acknowledge the witness spoke of other disturbances such as kitchen noises, I find that these noises may result more from the construction of the rental units and lack of soundproofing and that they are not unreasonable noises if someone is using kitchen facilities.

Despite the landlord's position that she has warned the tenants verbally about these disturbances, I find the landlord has taken no action such as set times that laundry can be used to ensure all occupants have appropriate access to laundry facilities and that those using the facilities are not disturbing others at unreasonable times.

As such, I find the landlord has failed to either provide sufficient written warnings of the tenants' disturbing behaviour or that she has taken any steps to prevent these disturbances herself. As a result, I find the landlord cannot rely on these disturbances to justify ending the tenancy at this time.

Conclusion

Based on the above, I grant the tenants' Application for Dispute Resolution and order the tenancy will continue in full force and effect.

I caution the tenants, however, that they should consider themselves now sufficiently warned that should they continue to do laundry late at night the landlord may have grounds to issue a new Notice to End Tenancy for Cause.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment, pursuant to Section 72(2)(a).

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: September 1, 2015

Residential Tenancy Branch

