



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's Application filed July 23, 2015: OPL

Tenants' Application filed September 4, 2015: CNC; DRI

Introduction

This Hearing dealt with cross Applications. The Landlord filed an Application for Dispute Resolution seeking an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use. On September 1, 2015, the Landlord provided additional documentary evidence to the Residential Tenancy Branch which included a request for an amendment as follows, "updating the End Tenancy to: One Month notice to End Tenancy for Cause". The Landlord also provided "proof of delivery of the Hearing Package, the amendment to the hearing package, the One Month Notice to End Tenancy for Cause and Landlord and Tenant Fact Sheet."

The Tenants filed an Application for Dispute Resolution seeking to cancel the One Month Notice to End Tenancy for Cause issued August 29, 2015, (the "Notice") and to dispute an additional rent increase.

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 Tenants testified that they received the Landlord's evidence package with his amendment request, but that they did not receive the Landlord's original Notice of Hearing documents and copies of his documentary evidence which included, in part:

1. A two page letter to the Tenants from the Landlord dated July 21, 2015. The Tenants acknowledged receiving the letter from the Landlord on or about July 21, 2015.
2. A copy of an e-mail from SV to the Landlord dated June 22, 2015, and a copy of the attachment enclosed in the e-mail. The attachment is a two page letter of complaint with respect to noise disturbances, inadequate heat, and the lack of cleanliness of the suite when SV moved in. SV suggested that the Landlord agree to a mutual agreement to

end the tenancy. The Tenants acknowledged seeing a copy of the attachment, but questioned whether it was actually written by SV.

3. Two colour photocopies of photographs of the Tenants' belongings in the garage.
4. A letter dated May 2, 2015, to the Tenants from the Landlord enclosing a Notice Terminating or Restricting a Service of Facility, which was also provided.
5. A copy of the most recent tenancy agreement, signed by the Tenants on October 1, 2014.
6. A copy of the first tenancy agreement, signed by the Tenants on May 5, 2011.

The remaining documents were provided in support of the Landlord's original Application for an Order of Possession based on the 2 month notice to end the tenancy for landlord's use. These documents were not considered as they were irrelevant to the Landlord's amended Application.

The parties agreed to continue with the Hearing, and agreed that the Hearing would continue concerning the Landlord's amended application to cancel the Notice, and the Tenants' Application filed September 4, 2015. Therefore, **the 2 month notice to end the tenancy issued May 11, 2015, is cancelled.**

Rule 2.3 of the Rules of Procedure provides that, "claims made in an application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply." I advised the parties that I find that that the Tenants' application to dispute an additional rent increase is not sufficiently related to their application to cancel the Notice. Therefore that portion of their Application is dismissed with leave to reapply.

Issue to be Decided

- Should the Notice be upheld or cancelled?

Background and Evidence

The rental property is a house with three suites. The Tenants live in the upper two floors of the rental property, which includes the upper deck. The Tenants' portion of the rental property has four bedrooms. The Landlord occupies one of the two lower suites. The third suite is rented out to another occupant.

The Tenants signed a new one year lease on October 1, 2014, a copy of which was provided in evidence. The lease includes a two page addendum.

The Landlord's evidence:

- The Tenants moved into the rental unit approximately 4 years ago. The first 3 years of the tenancy were "good", but since April, 2015, "conditions got worse".

- The Tenants placed the Landlord's property at risk by storing items (lawn furniture and snow tires) in the shared garage on the Landlord's side of the garage. The Landlord is concerned that these items will damage the Landlord's property, and most particularly the Landlord's vehicle.
- The Tenants kept leaving the garage door open, which put the Landlord's property in danger of being stolen.
- The Landlord erected a wall to prevent the Tenants' belongings from damaging his belongings. He also put in a double sided dead bolt on the door. The Tenants still have access to their part of the garage via their sundeck.
- A new occupant ("SV") moved into the third suite in June, 2015. On June 21, 2015, SV complained of excessive noise coming from upstairs. She stated that the sounds of "pet noises" and loud footsteps until 1:00 a.m. stopped her from getting sufficient sleep. The Landlord released her from her tenancy agreement, and suffered a financial loss.
- The rental property is well insulated for sound. The Landlord paid the Tenants' son to put in three layers of sound insulation.
- The Tenants have allowed an unreasonable number of occupants in the rental unit. The tenancy agreement stipulates the names of the people who are authorized to live in the rental unit but there is an additional person living there ("JW"). This is a breach of the tenancy agreement.

The Tenants' evidence:

- The Tenants find the Landlord's allegations "disheartening". The Tenants have done no damage, other than reasonable wear and tear, to the rental property and have made considerable improvements to the rental property.
- The garage is not equally shared. The Landlord has 13 feet, 8 inches and the Tenants only have 8 feet, 6 inches. By building the wall, the Landlord has restricted the Tenants' access to their sundeck. The Landlord has stated that he wants to "take over" the garage and the Tenants are not willing to give it up. The Landlord's car has never been vulnerable to damage from the Tenants' belongings.
- In the event of emergency the Tenants cannot access the utilities closet because the Landlord has barred their access.
- The Tenants spoke to SV and she told them, "I am not moving out because of you guys". The rental property is poorly insulated for sound. SV said she could hear their cat jump down from the kitchen counter, and that the Tenants' normal conversations could be easily overheard. SV's bedroom is directly under the Tenants' kitchen.
- The person who lived in SV's suite before she moved in was there for 9 months, and made no complaints about noise.

- The Landlord's spouse complained about JW walking across the floor at 11:00 a.m. A week later, the Landlord complained about the same thing. It is ridiculous to consider the act of walking across a floor a noise violation.
- The Tenants' son installed insulation, but it was installed about the Landlord's suite, which is under the garage. There is insufficient insulation between the Tenants' kitchen and the other suite's bedroom.
- JW is the Tenants' nephew. He does not live at the rental unit full time. His primary residence is in another city. He is a frequent guest because of his job, but only stays from Thursday night or Friday morning until the following Sunday. He does not stay every week.

Analysis

When a landlord seeks to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy. The landlord must provide its best evidence in support of the Notice.

The Notice indicates the following reasons for ending the tenancy:

Tenant has allowed an unreasonable number of occupants in the unit/site.

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- put the landlord's property at significant risk.

In this case, I find that the Landlord has not provided sufficient evidence to support the Notice. The Landlord submitted that the Tenants breached the tenancy agreement by having JW stay with them. The Landlord did not allege a breach of a material term of the tenancy agreement. Whether JW is a guest or an occupant, I do not find that having four people in a four bedroom home constitutes "an unreasonable number of occupants".

With respect to the Landlord's allegation that the Tenants unreasonably disturbed SV, I find that there is insufficient evidence that the noise is anything more than the normal noise associated with everyday living. The Landlord provided no sound recording which could support his submission that the Tenants are unreasonably loud. The Tenants provided a reasonable explanation that the house is insufficiently sound proofed.

With respect to the Landlord's submission that the Tenants' personal property is in danger of falling and damaging his personal property, I find that the Landlord has already mitigated any possible danger to his property by erecting a wall. I note that the addendum to the tenancy agreement provides, in part: "The landlord and tenant will share the garage for the duration of this lease. The tenant will have the smaller space from the rear door of the garage to the inside wall." There is no provision that the parties share the space equally.

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 for Landlord's Use issued May 11, 2015, is cancelled.

The Notice to End Tenancy for Cause issued August 29, 2015, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenants' application to dispute an additional rent increase is **dismissed with leave to reapply.**

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: October 01, 2015

Residential Tenancy Branch

