



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy. Both parties attended the hearing and had opportunity to be heard.

The landlord acknowledged receipt of evidence submitted by the tenant. However, the tenant stated that she was not served with the landlord's evidence. The landlord was unable to provide information regarding the service of evidence on the tenant. In the absence of proof of service, the landlord's documentary evidence was not used in the making of this decision. Both parties gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began On November 01, 2011. On September 29, 2015, the landlord served the tenant with a notice to end tenancy for cause. The reason for the notice is that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the building. The tenant applied to dispute the notice in a timely manner.

During the hearing the landlord raised the issue of the prior hearing that these parties had attended, on July 23, 2015. That hearing was convened in response to the tenant's application to dispute a notice to end tenancy for cause, dated May 30, 2015. In the decision dated July 24, 2015, the Arbitrator referred to various incidents that prompted the landlord to serve the tenant, with the notice to end tenancy.

After having read the decision dated July 24, 2015, I find that during the hearing on this date – December 03, 2015, the landlord cited and described the very same incidents that were discussed and dealt with during the hearing on July 23, 2015.

The only incident that occurred after the hearing on July 23, 2015, is an incident on or about September 22, 2015, when there was a complaint of loud music coming from the tenant's unit. The tenant denied playing loud music and stated that the music came from the unit directly below. The tenant stated that she requested the landlord to investigate the source of the music and the landlord failed to do so.

On September 22, 2015, the landlord served the tenant with a breach letter. The letter states that the tenant would be served with a notice to end tenancy if excessive noise from the tenant's unit continued to cause disturbances after September 22, 2015.

The landlord agreed that there were no noise incidents after September 22, 2015. However on September 29, 2015, the landlord served the tenant with a notice to end tenancy for cause.

The landlord also stated that the tenant's visitors interact negatively with other tenants when they request to be let into the building. The tenant stated that the buzzer does not work and since the tenant does not have a phone that her visitors could contact her on, the visitors are forced to ask other occupants of the building to let them in.

The landlord agreed that the buzzer is inoperative and added that it could not be fixed. I informed the landlord that the tenant should be provided with the ability to buzz her visitors in, to avoid further conflict.

Analysis

In order to support the notice to end tenancy, the landlord must prove the ground alleged.

In this case, the issues raised by the landlord were the same issues that were dealt with in the hearing on July 23, 2015, which resulted in the notice to end tenancy dated May 30, 2015 being set aside. Therefore incidents that took place prior to July 23, 2015, were not considered in the making of this decision.

The main reason for the notice to end tenancy dated September 29, 2015 was a noise complaint against the tenant on September 22, 2015. The tenant denied causing the noise disturbance and requested the landlord to investigate the source of the noise. The tenant stated that despite informing the landlord that the noise was coming from the unit directly below, the landlord did not carry out an investigation.

The landlord did not provide adequate evidence to support her allegation that the noise was emanating from the dispute rental unit.

The landlord also alleged that the tenant continues to call out to her cat after 11:00pm at night and the tenant denied the allegation. She maintained that she called for her cat but did not do so after 11:00pm.

Since the tenant denied the allegations of noise and the landlord did not file any evidence to support this allegation, I am unable to determine that the landlord has cause to end the tenancy.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy, dated September 29, 2015. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from causing noise disturbances; calling out for her cat after 11:00 pm and having her visitors create problems for other occupants. I find it timely to put the tenants on notice that, if such behaviours were to occur again 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.

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: December 03, 2015

Residential Tenancy Branch

