



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated August 30, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenants on August 30, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated August 30, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 1, 2011. The tenancy agreement provided that the tenant(s) would pay rent of \$750 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$387.50 at the start of the tenancy.

There are 59 units in the rental property. The present landlord has owned the rental property since 2013. The landlord's agent has been the onsite manager for approximately 1 ½ years. .

Grounds for Termination:

The Notice to End Tenancy relies on the following:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - ...
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - jeopardize a lawful right or interest of another occupant or the landlord

The landlord seeks to end the tenancy alleging the tenants are drug dealers. The landlord relies on the following evidence.

The building manager testified as follows:

- There has been a significant volume of traffic visiting the rental unit.
- On one incident she followed a guest out who dropped a package. She had it analyzed by a friend who said it was crystal meth.
- A neighbour who recently passed away continually complained to her about drug dealing coming from the rental unit.
- In one incident in the summer there was a drug overdose and the ambulance service was called and spent a considerable period of time in the rental unit dealing with the patient
- The landlord referred to a letter from EP stating he has bought drugs from the tenants.

JK testified the tenants are drug dealers and he does not want drug dealers in the rental property. The tenant rolls her dirty bicycle on carpets that have been recently shampooed.

JK testified they are seldom at the property and are there for a short period of time when there.

RO testified as follows:

- She is not a drug addict or drug dealer and there has not been drugs sold from the rental unit.
- She appreciated the efforts of the building manager in getting rid of the drug dealers and she can now bring her grandchildren to the rental unit.
- The alleged drug overdose referred by the building manager involved a diabetic who went into diabetic shock.
- She referred to a letter from MW (who recently passed away) dated October 27, 2016 that states she has lived beside the Tenants for more than five and a half years and have never experienced any noise or traffic problems from them. She relies on the Tenant to assist her with her meals, housekeeping and for transportation. She referred to another letter from a neighboring tenant stating she has not notice the kind of traffic that goes hand in hand with a drug dealer.
- She does not know who EP is.

GR testified as follows

- He denies that he is a drug addict or a drug dealer.
- He is 57 years old, a diabetic with high blood pressure.
- He complained about actions of the landlord in the past relating to shutting the buzzer, the parking of his truck and threats.
- He does not have a criminal record.
- He testified he does not know who EP.

The landlord responded disputing the complaints of the tenant. PK and JK stated they are seldom on the site and when there goes to the office to talk to the building manager. There was a problem with the FOB system a few years ago. At no time did the landlord cut off the intercom system to the tenant's rental unit.

Analysis:

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance or probabilities. After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- One can appreciate the goal of the landlord to remove drug dealers from the rental property. However, the landlord failed to present sufficient evidence to establish the allegation that the tenants are dealing drugs from the rental unit.
- The building manager testified she has witnessed a high volume of traffic. This is not sufficient to prove there is drug dealing from the rental unit.
- The building manager relied on the oral hearsay evidence of complaints from a neighboring tenant who recently passed. The tenants produced a letter from that tenant which supports the tenant's position. Little weight can be given to the oral hearsay evidence given by the landlord.
- The building manager testified she obtained a small package which has been lost from a visitor leaving the rental unit which a friend stated contained crystal meth. The friend did not testify. That person did not testify and there is insufficient evidence to establish that he is qualified to make that expert determination.
- The landlords testified they are seldom at the rental property. They failed to present sufficient evidence of drug dealing.
- The landlords failed to present sufficient evidence that the Tenants have allowed an unreasonable number of occupants into the rental unit.

Determination and Orders:

In summary I determined the landlord failed to provide sufficient evidence to establish they have grounds to end the tenancy. As a result I ordered that the Notice to End Tenancy dated August 30, 2016 be cancelled. The tenancy shall continue with the rights and obligations remaining unchanged. As the tenants have been successful I ordered that the landlord reimburse the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

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: November 03, 2016

Residential Tenancy Branch