



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on February 01, 2014. The monthly rent is \$1,100.00 payable on the first of each month. The rental unit consists of an apartment which is located on the third floor of a building complex that houses a total of 39 apartments.

On February 14, 2017 the landlord served the tenant with a one month notice to end tenancy for cause. The notice was served for the following reasons;

1. Tenant or a person permitted on the property by the tenant:
 - has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord stated that the tenant creates noise disturbances when he hosts parties in his rental unit. The landlord provided the tenant with two warning letters dated December 29, 2014 for a noise disturbance on December 24, 2014 and dated March 11, 2015 for noise disturbances on three separate dates in March 2015.

The landlord also filed a copy of a letter of complaint written by the occupant of the unit below the dispute rental unit. The letter is handwritten and is dated February 14, 2017. The content of the letter describes alleged noise disturbances created by this tenant on February 08, 09, 10 and 11, 2017.

The tenant denied having parties on these dates and stated that the tenant complains about noises associated with every day activity. The tenant also stated that he had invited the resident manager to visit him at the time these alleged parties were ongoing and the manager never did.

The tenant argued that he did not create any noise disturbances and that he was unaware of any complaints from other occupants of the building. The tenant stated that apart from the two warning letters received in 2014 and 2015, he had not received any other warnings prior to this notice to end tenancy for cause.

Analysis

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

Based on the testimony of both parties, I find that the tenant received two warning letters in December 2014 and March 2015. In the last two years since then, the landlord has not notified the tenant in writing, of any noise complaints.

The tenant denied having caused any noise disturbances. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the landlord stated that he provided the tenant with verbal complaints which the tenant denied. The landlord did not have adequate evidence to support his testimony of attempts made to notify the tenant about the noise disturbance complaints.

Apart from the two warning letters served on the tenant at least two years ago, the landlord provided one recent letter of complaint dated the same day as the notice to end tenancy. The landlord made allegations that the tenant has disturbed the other occupants and affected their quiet enjoyment of the premises, but did not file any evidence to support his allegations. The tenant denied the allegations. Therefore, 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 February 14, 2017. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from giving other occupants of the residential complex, reason to complain. I find it timely to put the tenant 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 a dispute resolution officer, 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: March 14, 2017

Residential Tenancy Branch