Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT

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 June 11, 2018.
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 one month Notice to End Tenancy was on the Tenants by posting on June 11, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 18, 2018. With respect to each of the applicant's claims I find as follows:

Issues 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 June 11, 2018?
b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:
The tenancy began in 2016. BF moved into the rental unit in early 2018 and on February 6, 2018 the parties signed a fixed term tenancy agreement that provided that the tenancy would start on April 1, 2018 and end on Mary 31, 2019. The rent was $1325 per month payable in advance on the first day of each month. The tenancy agreement provided that tenants paid a security deposit of $662.50 on August 16, 2016 and a pet damage deposit of $662.50 on August 30, 2017.

Grounds for Termination:
The Notice to End Tenancy identifies the following grounds:

- 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

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord seeks to end the tenancy based on the following evidence:

- The on March 29, 2018 the CG saw the tenant BF dispose of a lamp in the garbage area on the security camera.. This is not permitted. On March 30, 2018 they saw BF in the elevator and asked her to remove the lamp and perhaps take it to a thrift store. She stated she would. However, the landlord testified he saw the lamp in a broken condition in the garbage area.
- On April 4, 2018 MD texted the tenant and asked that she remove the lamp. The tenant phoned the caretaker after 6:30 p.m. and engaged in a abusive and vulgar conversation with her. The tenants were given a warning letter dated April 5, 2018.
- On May 6, 2018 the downstairs tenant e-mailed the landlord complaining that the tenants were having a party with loud music.
- On May 7, 2018 the landlord received a e-mail from the downstairs tenant complaining about the tenants' dog barking.
- The landlord gave the tenants a warning letter dated May 7, 2018 indicating they had received complaints of a party taking place in the evening on May 6 with music excessively loud. It also states "Just a friendly reminder that living in a multi-unit complex, noise travels. While it is not possible to be completely silent in the course of everyday living, it is expected that residents will exercise a reasonable degree of respect for their neighbour's rights to peaceful enjoyment of their homes."
- The landlord produce an e-mail dated June 11, 2018 from the upstairs tenant making the following complaints:
  - The noise has gotten worse.
  - On two occasions the last week guests have knocked on their door looking for the tenants.
  - They were stomping and yelling to after midnight.
  - The police and ambulance were called.
- The landlord served a letter dated June 11, 2018 on the tenants which states it was a Final Warning but included the one month Notice to End Tenancy.

The tenants gave the following evidence:

- They deny they have had a party with guests. Both work full time and do not know many people in the city.
- They testified they do not have a television or sound system. The only form of viewing they watch is on their laptops.

- The tenant testified and produced the 6 text messages she sent to the caretakers. Not the 11 messages that they alleged.
- They do not have guests over. The only guests they have had over in the last two months was their grandparents.
- However, the tenants that live above them are noisy and disruptive.
- The tenant produced a letter from their neighbor stating they two tenants are hardworking girls and she has never had any complaints of noise coming from their unit.
- BF acknowledged she saw the caretakers in the elevator in early April and they asked her to remove the lamp. She testified upon request she immediately to the lamp to the thrift store. If the landlord saw a broken lamp in the garbage it was not hers.
- The text messages between the caretakers and the Tenant at the time indicates the Tenants are telling the landlord the lamp was not BF's.
- There are many other dogs in the building who bark. AH dog does not bark.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- I determined the landlord failed to prove that the tenants left the lamp or that they have caused excessive noise for the following reasons:
    - I accept the testimony of the Tenant that she removed the lamp when asked and took it to the thrift store.
    - Witness #2 testified he viewed the security camera and witnessed BF leaving the lamp there. BG doesn't deny this. She admitted this to the landlord and subsequently removed it. The summary produced by the caretakers state they saw BF leave the lamp in the security camera. It does not state it saw her leave it there a second time.
    - The landlord failed to prove the tenants have caused excessive noise. The Property Manager has no first hand evidence about the excessive noise. The landlord is relying on complaint letters from the downstairs tenant. However, the downstairs tenant failed to attend the hearing and failed to give live evidence. While the e-mails are admissible, the failure of the downstairs tenant to attend in person goes to the weight of the allegations made. In the absence of her testimony at the hearing where questions could be asked of her I determined the landlord failed to prove the Tenants caused excessive noise. I accept the evidence of the tenant denying these allegations.
    - For the reasons set out above I determined the landlord failed to prove that the Tenants breached a material term of the tenancy agreement.
    - Further, I do not accept the submission of the landlord that the letters of April 5, 2018, May 7, 2018 and June 11, 2018 are sufficient to be the sufficient notice required under the breach of material term section of the Act as they failed to

give the tenants a reasonable time to correct the breach after being given written notice to do so.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated June 11, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenants have been successful with this application I order that the landlord pay to the tenants the sum of $100 such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: August 13, 2018

Residential Tenancy Branch