



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

Both parties agreed that the tenancy began on May 01, 2018 for a fixed term of one year. The monthly rent is \$2,300.00 payable on the first of each month. The landlord's property consists of a two level home. The rental unit is a three bedroom suite on the upper floor. The tenant rents this suite and lives with her three children. The landlord used to live on the upper level but moved to a one bedroom suite on the lower level.

The landlord confirmed the tenant's testimony regarding the reason for the landlord moving out of the upper level into the lower level. The landlord's spouse and their two children moved out of the home and the landlord decided that he no longer needed a three bedroom suite and accordingly moved into the one bedroom below and rented out the upper level.

The landlord added that he has now moved out of the one bedroom suite and currently lives with his spouse and children at their residence. The one bedroom suite is currently unoccupied.

The landlord stated that while he lived at the rental property, the tenant's children used to run around the rental unit and sometimes stomp on the floor which caused loud noises that gave him a great deal of stress. He stated that he is particularly sensitive to loud noises and informed the tenant of the problem. The landlord stated that the tenant's responses to his noise complaints appeared threatening and caused him further stress which brought on panic attacks.

The landlord testified that right from the start of tenancy, the tenant would leave windows open even when she was away. The landlord stated that he had already had a break in and therefore was anxious about maintaining the security of the rental unit. The landlord testified that on June 17 and June 19, 2018, he verbally warned the tenant about securing the house by keeping the windows shut but the tenant continued to leave them open. On June 21, 2018 the landlord gave the tenant a written warning.

The tenant stated that she kept the windows open because of the heat during summer and also to get fresh air into the rental unit. The tenant testified that she believed that the windows that were left open were too small for an adult to use as access to the inside. The tenant also stated that the angle of the windows was such that the entire door of the window would have to be taken off its hinges to allow someone small in size to get through.

On July 09, 2018, the landlord served the tenant with a one month notice to end tenancy for cause. The reasons for the notice are:

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

- 1. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*
- 2. Put the landlord's property at significant risk*

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

The tenant added that to accommodate the landlord's request some time during the month of August, she stopped leaving the windows open when she was away. The landlord agreed that the windows are currently kept shut.

The landlord testified that the tenant's responses to his noise complaints and leaving the unit with the windows open caused him a lot of stress which lead to a diagnosis of PTSD. The landlord started having panic attacks and could not return to work. In the interest of his health and on his doctor's advice, the landlord moved out of basement.

The landlord testified that he would like the tenancy to end so that he could move into the rental unit and return to work

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenant has jeopardized the health and safety of the landlord, has put the landlord's property at significant risk and has breached a material term of the tenancy agreement.

The landlord's testimony consisted of noise disturbances associated with normal every day activities of children. The noise disturbances may inconvenience the landlord but are to be expected when the upper level is rented out to a family with children. The landlord testified that the tenant's responses to his complaints which he found threatening were the reason for the notice to end tenancy. The landlord added that the noise disturbances were not the reason for the notice.

Prior to entering into a lease agreement with the tenant, the landlord was aware that noise disturbances caused by movements on the upper floor are not unexpected. Persons occupying a basement are required to accept the fact that that they will hear noises from the upstairs. I find that the landlord has not proven that the noise disturbances were deliberate on the part of the upstairs occupant.

Based on all the evidence before me, I find that the landlord was aware of his sensitivity to noise and therefore should have exercised appropriate caution when selecting a tenant for the upper level. This would have not have put the landlord in a position to make noise complaints which would subsequently have prevented responses from the tenant that caused the landlord anxiety and panic attacks.

I find that the landlord may have been disturbed by the noise generated by the movements of the upstairs occupants, but this does not constitute a basis to put an end to the tenancy.

I further find that the tenant had reason to open windows during summer to air the unit out but for safety reasons the tenant should have refrained from doing so for periods that she was away from the rental unit.

I accept that the landlord was fearful of a break in as he had already been broken into. The tenant was given a warning letter and should have refrained from leaving the rental unit with the windows open.

While I accept that the tenant did not take appropriate action after having been given a written warning, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. The landlord agreed that the tenant no longer leaves the windows open and I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated June 29, 2018. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from leaving the windows open when she is away from the rental unit. 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 an Arbitrator, for consideration.

Since the tenant is successful in her application, I award her the recovery of the filing fee of \$100.00.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant may make a one-time deduction of \$100.00 from a 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: September 11, 2018

Residential Tenancy Branch