



Dispute Resolution Services

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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 September 20, 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. The tenants presented evidence in the form of statutory declarations from the three tenants as well as being present to provide oral evidence if required. The landlord presented evidence in the form of oral testimony and a witness statement from NM.

I find that the one month Notice to End Tenancy was personally served on the Tenant on September 20, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on October 11, 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 September 20, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on January 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$1000 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy. The tenancy agreement provided for a month to month term.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - ...
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

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

- NK testified that she received a message from NM (another tenant in the building) of an incident which occurred in the parking lot between MH and RZ (co tenants of this unit) where RZ was attacked by MH.
- The landlords produced a letter from NM dated October 26, 2018 which states she witnessed a woman (RZ) running from the back parking lot and a man in dark clothing (MH) running after her. He tackled her. She started to scream and he knelt on top of her. The letter states that she, NM yelled at them from her balcony and then called the police. The police attended and took statements from her and the parties. She offered to RZ that she could stay with her but RZ stated she wished to remain in her rental unit with MH
- NK and CM did not witness the incident.
- The landlord testified that NM has given notice to end her tenancy and will be vacating the rental unit at the end of November because of fears for her safety.

The tenants gave the following evidence in the form of statutory declarations:

- The tenants acknowledged that RZ and MH got into an argument when returning home from a drive at about 8:00 p.m. The argument continued and RZ got frustrated and walked away. MH grabbed her and she pulled her hand away which hurt her hand. She started to cry as a result of the hurting her hand. The incident lasted about 10 minutes. She talked to the police when they attended. She did not wish to stay with NM and was happy to stay in her apartment with MH.
- There have been no other incidents. They are not aware any other complaints.
- No criminal charges have been laid as a result of the incident.

Analysis:

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:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities.
- The landlord's witness NM did not attend the hearing and was not available to be cross examined.
- In the absence of oral evidence from NM given at the hearing I determined the landlord failed to prove that NM has been significantly interfered with or unreasonably disturbed as a result of the conduct of the tenants.
- The landlord testified NM gave notice to vacate because she fears for her safety. The evidence letter of NM states she fears for her safety but does not state that she has given notice because of this. The statement of the landlord is hearsay evidence and in the circumstances I determined little weight can be given to it.
- I determined that the landlord failed to prove that the incident in the parking lot was sufficient grounds to end the tenancy.
- RZ is content to continue to live with MH. I determined there is insufficient evidence that she has been significantly interfered with or unreasonably disturbed.
- I determined the landlord failed to prove that the tenants have engaged in illegal activities adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the one month

Notice to End Tenancy dated September 20, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The tenants have been successful with this application. As a result 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 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: November 16, 2018

Residential Tenancy Branch