



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE WHEELER CHEAM
REALTY and [tenant name suppressed to protect privacy]

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 and 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. The tenant represented himself. The landlord was represented by their agents. Two witnesses for the landlord also attended the hearing. As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and stated that he did not file any evidence of his own. I find that the landlord was 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

The tenancy began on August 01, 2016. The rental unit consists of an apartment located in three level building that houses 15 apartments.

The landlord testified that he received multiple letters of complaint from the occupants of the rental units located above and below this rental unit. The landlord filed copies of the letters which are dated February 06, 17, and 20 and March 05, 2019. The letters describe noise disturbances created by the tenant through the day and night. The writers of the letters occupy units below and above the tenant. They provided testimony as witnesses. Their testimony consisted of complaints regarding loud noises, pounding on the ceiling, banging cutlery, pots and pans on the sink, vibrating noises from a fan that was kept on 24 hours, stomping on floors using boots, ranting loudly etc. The witnesses testified that these noise disturbances have affected their sleep and health.

The landlord stated that he had also received verbal complaints and had spoken with the tenant about the issues.

On March 13, 2019, the landlord inspected the rental unit and found considerable damage to the walls and ceiling of the apartment, some walls were painted black and portions of the carpet were ripped out. The tenant stated that he had “cut” the carpet out and agreed to replace it. The tenant also took responsibility for one hole in the ceiling but denied having caused the rest of the damage to the ceiling and walls. The tenant stated that the damage was in existence at the start of his tenancy. The landlord filed a copy of the inspection report and photographs to support his testimony regarding the condition of the rental unit as of March 13, 2019.

On March 18, 2019, the landlord served the tenant with a warning letter dated March 15, 2019 along with a one month notice to end tenancy for cause. The tenant disputed the notice to end tenancy in a timely manner

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.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

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 significantly interfered with or unreasonably disturbed another occupant or has engaged in illegal activity that has damaged the landlord's property.

Based on the testimony of both parties, I find that the landlord did not serve any written warning letters to the tenant to inform him that the condition of the rental unit was not acceptable, prior to serving the tenant with a notice to end tenancy. The landlord stated that he gave the tenant verbal warnings about the noise complaints but was not aware of the damage to the rental unit until he carried out an inspection on March 13, 2019. I find that the tenant was not put on sufficient notice that his actions may have been putting the landlord's property at significant risk. In addition, the landlord did not give the tenant an opportunity to fix the damage prior to serving him with the notice to end tenancy. The tenant agreed that he caused damage to the rental unit, but I also find that the tenant expressed willingness to fix the damage he created.

I accept the testimony of the witnesses that the tenant created significant noise disturbances and I find that the landlord served the tenant with a warning letter. However, the landlord served a notice to end tenancy along with the warning letter. I find that the tenant must be given an opportunity to change his alleged behavior by putting the tenant on notice that his behavior is unacceptable prior to serving the tenant with a notice to end tenancy.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated March 18, 2019. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from causing disturbances and damage to the rental unit. I find it timely to put the tenant on notice that, if such behaviors 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 his application, I grant the tenant the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent.

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: May 14, 2019

Residential Tenancy Branch