



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APARTMENTS SRUS PROPERTY
MANAGEMENT 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 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. The tenant attended along with his agent. The landlord was represented by their agent. 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*.

I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on May 01, 2014. On September 20, 2019, the landlord served the tenant with a one-month notice to end tenancy for cause. The tenant disputed the notice in a timely manner. The notice to end tenancy alleges that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord stated the tenant is overly sensitive to noise and reacts by chastising other tenants or calling the police. In December 2016, she served the tenant with a warning letter regarding the noise complaints he made against other tenants. A copy of the letter was filed into evidence.

The letter explained that noises were to be expected from normal everyday living activities and requested the tenant to refrain from harassing other tenants and the property manager. The landlord also informed the tenant that he would be served with an eviction notice if this behavior persisted. The tenant stated that since that time he has refrained from making noise complaints against other tenants until June 2019, following an incident with another tenant who slammed her door. The landlord did not serve a warning letter to the tenant after this incident.

The next incident involved the renovation work that was being carried out in an apartment which became available for renovations. Work started on August 28, 2019. The tenant stated that he informed the landlord that as per the local City bylaws any construction or renovation work could be carried out only between the hours of 7am to 7pm, on Monday to Saturday. The landlord agreed that work was carried out on a Sunday and stated that the tenant took it upon himself to visit the rental unit uninvited and inform the worker that work was not permitted on a Sunday. The tenant also agreed that he had entered the unit on one other occasion without permission.

The tenant testified that on the next Tuesday at around 7:30pm he heard a loud bang which he thought sounded like a package being dropped to the floor in the unit above. The tenant stated that he heard 16 such loud bangs and had to leave the rental unit and stay in the lobby until it was done. The tenant stated that the noise came from construction material being dropped off at the unit under renovation. The landlord responded by saying that the packages were dropped off by her son at 6:00pm and not 7:30pm as testified by the tenant. The landlord added that her son is home from work at 6:00pm which is when he delivered the packages to the unit under construction.

The tenant testified that the notice to end tenancy was in retaliation to the information he provided to the landlord regarding work hours and his attempts to enforce these hours.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. Based on all the evidence before me, I find that the tenant entered the unit under construction without permission to do so and spoke with the worker regarding the hours that he was permitted to work. In addition, the tenant entered the same unit a second time without permission.

However, I also find that the landlord was carrying out renovations on a day that was not in compliance with the local by laws. The tenant had the right to object to noise disturbances such as these created on a day when renovations are not permitted. Regarding the other noise disturbance that occurred on a weekday after 7pm, I find on a balance of probabilities and based on the landlord's testimony, that it is more likely than not that the noise started around 7pm.

The landlord has served the tenant only one warning letter in December 2016 which is three years prior to the eviction notice.

Based on the above, I find that the landlord has not proven the reason for the notice to end tenancy. While the tenant did enter the unit under construction without permission, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Accordingly, I allow the tenants' application and set aside the landlord's notice to end tenancy dated September 20, 2019. As a result, the tenancy shall continue in accordance with its original terms. Since the tenant is successful in his application, he is entitled to the recovery of the filing fee. The tenant may make a one-time deduction of \$100.00 from a future rent.

The tenant would be wise to refrain from giving the landlord and 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 an Arbitrator, for consideration.

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: December 09, 2019