



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ET

Introduction

This hearing dealt with an application by the landlord for an early end to tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds for ending the tenancy early?

Background and Evidence

The landlord testified that the property manager who attends to the building in which the rental unit is situated has received many complaints throughout the year about noise generated by the tenants. The property manager did not participate in the hearing to give testimony, nor did any of the other parties who allegedly complained about the tenants. The landlord testified that on September 15 the property manager served the tenants with a one month notice to end tenancy for cause. The landlord provided copies of the reports made by the property manager in which noise complaints were documented and further provided copies of emails sent by the tenant who lives immediately beside the rental unit (the "Neighbour") in which she complained of excessive noise. The Neighbour's first email, which was sent on September 15, indicates that on September 13 at 11:00 p.m. she heard a "loud and violent physical and verbal altercation" from the rental unit. The Neighbour wrote that she was in the process of phoning the police when the male tenant banged on her door, swearing and yelling, "open your doors, we need an ambulance." The Neighbour wrote that she phoned the police and further testified that the fire alarm was activated but that she and her daughter were afraid to leave their apartment until the police arrived. The Neighbour's second email was sent on September 25 and states that at approximately 10:15 p.m. on September 24, there was shouting and "smashing and crashing of objects being thrown against the wall" which stopped suddenly and then started again in

a few minutes, accompanied by the front door of the rental unit slamming and one of the tenants screaming. The Neighbour telephoned the police who removed the male tenant from the rental unit. The landlord seeks an early end to tenancy, stating that although the tenancy will end on October 31 in accordance with the notice to end tenancy, he feels it is unsafe for other occupants of the building if the tenants remain in the rental unit until that date.

The tenants acknowledged having received the notice to end tenancy on September 15 and further acknowledged that they had not disputed the notice. The tenants testified that on September 13 the female tenant was severely beaten in the rental unit by persons unknown. The male tenant returned home to find the female tenant in need of medical assistance and as his telephone was not working, attempted to get help from other occupants of the building. The male tenant acknowledged that he was taken away by the police on that date, but testified that he was released when the police were able to ascertain that the male tenant had not caused the female tenant's injuries. The tenants further testified that on September 24, the male tenant had repeated seizures which required medical attention.

Analysis

In order to be successful in this application, the landlord must establish not only that there are grounds to end the tenancy but that it would be unfair or unreasonable to require the landlord to wait for a one month notice to end tenancy to take effect. While noise has been a problem throughout the tenancy, I find that noise problems previous to the events beginning on September 13 may have been grounds for a one month notice to end tenancy but not for an early end to tenancy. With respect to the events taking place on September 13 and 24, I have considered that the landlord provided no sworn evidence from witnesses or from the property manager and that his evidence is hearsay. I have further considered that the tenants provided testimony which I find reasonably explains the extreme disturbances in the evenings of September 13 and 24. I find that the landlord has failed to meet his burden of proof and accordingly dismiss the application.

Conclusion

The landlord's application is dismissed. The tenancy will continue until October 31, at which time it will end in accordance with the notice to end tenancy.

Dated October 15, 2008.