



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for an Order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”). The effective date of the Notice is automatically adjusted to March 31, 2011 pursuant to section 53 of the Act.

The reasons for the Notice are as follows:

- The Tenant of a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or has put the landlord’s property at significant risk; and
- The 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; and
- The Tenant has caused extraordinary damage to the unit.

At the Hearing, the Landlord withdrew the item of cause in relation to extraordinary damage to the unit.

On March 18, 2011, the Landlord filed late evidence. The Landlord states that the evidence was served on the Tenant by a third party and is relevant to the dispute. The Tenant states that the evidence was not served on him. The Landlord was unable to prove service. Accepting that this evidence would prejudice the Tenant, I decline to accept or consider this evidence.

I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing by personal service in accordance with Section 89 of the Act.

The Tenant and the Landlord were each given full opportunity to be heard, to present oral evidence and to make submissions.

Issue(s) to be Decided

Is there *sufficient* cause to end the tenancy?

Background and Evidence

Neither the Landlord nor the Tenant could state when the tenancy commenced and believed it to have been around the middle of December, 2010. The Tenant pays \$760.00 in rent.

The Landlord states that he has received numerous and constant complaints from other tenants about noise coming from the tenant's suite. The Landlord states that other tenants have also complained that the Tenant allows persons into his suite on a continuous basis between the hours of 11:00 p.m. and 8 a.m. and that as a result there is significant noise during the night. The Tenant states that although he has late night guests, they do not cause noise. The Tenant states that the noise comes from a suite at the front of the building.

The Landlord states that last week a person allowed into the suite by the Tenant caused a disturbance and threatened other tenants. This resulted in the police being called. The Tenant denies that he allowed this person into his suite and that he was simply helping this person move his belongings out of a suite at the front of the building.

The Landlord states that the noise and disturbance at the unit have resulted in 2 other tenants leaving or preparing to leave their tenancies. The Landlord states that

complaints specifically have come from the tenant directly below the Tenant's suite and directly next door the Tenants suite. The Tenant states that he has not heard any complaints from his neighbours and that the suite directly next door has been vacant and undergoing renovations for the last couple of months. The Tenant further states that the persons in the suite below his unit just moved into that suite next door.

The Landlord states that he suspects the Tenant has engaged in illegal activity as there are numerous bikes being brought in and repaired by the Tenant. The Tenant denies any illegal activity whether in relation to bikes or otherwise.

The Landlord states that he has owned the building housing the Tenant's unit for four years and would not evict people lightly as this is his business. He is concerned however that other tenants are complaining and asking to move away because of the night-time noise and commotion at the Tenant's unit.

The Tenant states that the landlord has a misunderstanding about where the noise and commotion is coming from. The Tenant states that the noise and late night commotion is coming from the unit at the front of the building. He also states that noise was also coming from the suite next door to him as it was being renovated for the last 2 months.

Analysis

For this type of application, the onus is on the Landlord to prove the Notice was issued for sufficient reasons, and that at least one reason must constitute sufficient cause for the Notice to be valid. The Landlord is not required to prove all reasons stipulated for ending the tenancy. Ending a tenancy is a serious matter and the Landlord must show sufficient cause to end the tenancy.

In this case, I find the evidence of the Landlord is not more compelling than the evidence of the Tenant. On the balance of probabilities, I find the Landlord has not met

the burden of proof in showing he had *sufficient* cause to end this tenancy.
Accordingly, I set aside the Landlord's Notice and order that the tenancy continue.

Conclusion

The Landlord's Notice is set aside and the tenancy continues.

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: March 22, 2011.

Residential Tenancy Branch