



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing was scheduled to hear the tenant's application to cancel a 1 Month notice to End Tenancy for Cause; a request for orders for compliance; and, a request for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Despite identifying multiple dispute codes in filing this Application for Dispute Resolution the tenant only provided particulars with respect to Notices to End Tenancy. The tenant did not provide sufficient particulars with respect to his request for orders for compliance and monetary compensation as required under the Act. Therefore, this decision deals only with the Notice to End Tenancy under dispute. The tenant is at liberty to file another Application for Dispute Resolution with respect to any other issues he chooses to pursue.

Neither party provided a copy of the Notice to End Tenancy under dispute. I confirmed the content of the Notice with both parties and am satisfied it is an otherwise valid notice issued on the approved form. Therefore, I proceeded to hear from the parties and make a decision as to whether the Notice to End Tenancy should be upheld or cancelled.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

The male tenant has been residing in the rental unit for approximately seven years and approximately 2 years ago his ex-girlfriend moved in with him. The tenant and his girlfriend (the co-tenants) are required to pay rent of \$600.00 on the 1st day of every month.

The rental unit is a single room with shared access to the kitchen, bathroom and living areas in the basement of a house. The co-tenants share the kitchen, bathroom and living area with two other tenants (Tenant #1 and Tenant #2) who are renting two other rooms in the basement. The landlord lives upstairs.

On May 26, 2012 the landlord issued the co-tenants a 1 Month Notice to End Tenancy for Cause (the Notice) with a stated effective date of June 25, 2012.

The landlord cited two reasons for issuing the Notice: 1) the tenant is engaging in illegal drug use on the property; and 2) the tenant is unreasonably disturbing the other tenants due to heavy walking and door slamming late at night or early in the morning when others are trying to sleep.

Upon enquiry, the landlord was uncertain as to the nature of the drugs the tenant was using in the rental unit and could not confirm the drugs were illegal. The tenant claimed he had taken a urine drug test and it is negative for illegal drugs. Given the landlord's lack of specific detail with respect to this issue I did not consider it further and proceeded to hear about the second issue.

The landlord submitted that the tenant walks on the floors extremely heavy and then slams the door when he goes outside to smoke in the early morning hours. The landlord has installed a second layer of carpeting on the concrete floor in an effort to quiet the noise and has spoken with the tenant on a number of occasions about the excessive noise.

The tenant submitted that the hallway floor is actually a poorly constructed plywood subfloor that bounces when he walks on it. The carpeting that is on the subfloor is old and thin without under pad. The tenant acknowledged that he and his girlfriend do go outside to smoke in the early morning hours but denied slamming the door. The tenant submitted that the landlord installed a camera to obtain evidence; however, the video only proved that the tenant does not walk loudly. The tenant pointed out that prior to Tenant #2 moving in there were three prior tenants in that room and there were no complaints. The tenant submitted that the Notice to End Tenancy was issued after Tenant #2 was slamming doors in response to the tenant's girlfriend using the microwave after midnight. The police were called and now the other two tenants are making false accusations just to get rid of the tenant.

The landlord called the two other tenants (Tenant #1 and Tenant #2) as witnesses.

Tenant #1 testified that he has been living in the basement for over seven years. The witness' main complaint was the incident that occurred in the early morning hours of May 26, 2012 when the tenant's girlfriend was using the microwave after the time permitted under the house rules. Further, Tenant #1 complained that in the week preceding the May 26, 2012 incident the tenant was pounding down the hallway at approximately 6:45 a.m.

The tenant responded by stating that he leaves the house at 7:00 a.m. to go to work and he has no other option but to use the hallway to go to the bathroom before leaving for work. The tenant also responded by stating that although his girlfriend was using the microwave in the early morning hours of May 26, 2012 it was the overreaction of Tenant #2 that resulted in Tenant #2 slamming doors and the police being called.

Tenant #2 testified that he has been living in the basement for approximately two years. During this time the tenant has been told by the landlord that he was being too loud when others are trying to sleep. The tenant would respond by correcting his behaviour for a short period of time and then the loud walking and slamming of doors would resume.

The tenant responded by suggesting that Tenant #2 is overly sensitive to noises and has problems sleeping but that the video taken by the landlord proves the tenant is not walking too loudly.

As evidence the landlord provided photographs of the hallway, laundry area and outside areas of the residential property. A written submission was provided by the landlord, Tenant #1 and Tenant #2. Finally, the landlord provided a copy of a letter addressed to the tenant on June 2, 2012. The letter requires the tenant to apologize to the other tenants if he wants to continue residing in the rental unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The landlord could not provide any specific information or evidence to corroborate his assertion that the tenants are engaging in illegal activity on the property and, as indicated previously, I have not considered this reason any further. Rather, I am satisfied there is some evidence of disturbances to the other tenants and I will consider that matter below.

In viewing the landlord's photographs I accept the tenant's submission that the carpeting is old and thin. It follows that I accept the tenant's submission that the floor is a plywood subfloor and without adequate under pad. It appears as though the issues with sound transference are attributable to various reasons, including: multiple unrelated people reside together in a basement of a house has essentially been turned into a rooming house; and, the building was likely not constructed for the purpose in which it is being used and does not include the soundproofing that would be in a newer, purpose-built building.

While the landlord may not be obligated to upgrade the building as the Act provides for repairs and maintenance that take into account the age and character of the building; the tenants cannot be expected to refrain from making ordinary and reasonable sounds associated with normal daily living. Often in these situations the effort and cooperation of both the tenants and the landlord will increase the chances of a harmonious living arrangement. In this case such efforts may include: the tenant and his girlfriend being more considerate and conscientious during the times people are sleeping; and, the landlord could reduce the effect of slamming doors by installing soft closers on the hinges and installing high density under pad on the subfloor.

It remains that the issue to determine is whether it has been proven that the tenants have been unreasonably loud and disturbing. I have considered the following in finding the landlord has failed to show the tenancy should end.

- The landlord's written submission acknowledges that the surveillance camera did not show the tenant creating loud noises or walking heavily.
- The landlord's written submission describes how it was Tenant #2 that was intoxicated and taken away by the police on May 26, 2012.
- The primary complainant has been Tenant #2 who was taken away by police.
- Tenant #1 has lived with the tenant approximately 7 years and his only complaints were related to the incident of May 26, 2012 and heavy walking the week before.
- As of June 2, 2012 the landlord was prepared to continue with the tenancy should the tenant apologize to the other tenants.

In light of the above factors, I cancel the Notice to End Tenancy issued May 26, 2012 with the effect that this tenancy continues.

As the tenant was successful in this application I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from rent otherwise payable to the landlord in satisfaction of this award.

Conclusion

The Notice to End Tenancy issued on May 26, 2012 has been cancelled and the tenancy continues. The tenant has been authorized to deduct \$50.00 from rent payable to the landlord in order to recover the filing fee paid for this application.

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: June 27, 2012.

Residential Tenancy Branch