



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant, an advocate for the tenant and the landlord participated in the teleconference hearing.

The tenant submitted evidence to the Branch on November 19 and November 30, 2012, which she did not serve on the landlord. I did not admit or consider that evidence. The tenant received the landlord's evidence on December 1, 2012; however, the tenant stated that she was prepared to respond to the landlord's evidence in the hearing and did not request an adjournment.

The tenant submitted evidence after the teleconference hearing. I did not admit or consider that evidence.

I have reviewed all testimony and other admissible evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On October 24, 2012, the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were that the tenant (1) significantly interfered with or unreasonably disturbed another occupant or the landlord; (2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and (3) engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Landlord's Evidence

The landlord received three complaint letters from the tenant's next-door neighbour. The landlord submitted copies of two of those letters in their evidence; one is dated August 4, 2012 and the other is dated October 13, 2012.

In the letter dated August 4, 2012, the neighbour complained that the tenant was constantly making loud noises in the middle of the night, banged on the shared wall between their units, and confronted the neighbour in the hallway about two letters the tenant had written to the neighbour about the volume of the neighbour's TV.

The tenant had also complained to the landlord about noise from the neighbour. The landlord wanted to have a meeting with both the tenant and the neighbour to try to resolve the issue. On August 22, 2012, the landlord served a letter on both the tenant and the neighbour, requesting that they meet with the landlord the following day. The landlord stated in the hearing that another agent of the landlord, who did not appear in the hearing, met with the neighbour on August 23, 2012. The tenant did not attend the meeting.

In the neighbour's letter dated October 13, 2012, the neighbour wrote that the tenant still made constant intense noise between 11:00 p.m. and 4:00 or 5:00 a.m. daily, and one occasion she attended the neighbour's door with a baseball bat.

The landlord stated that the tenant would come into the landlord's office and yell at the landlord's agents and behave very aggressively. The tenant shoved the landlord's agent when she was serving her hearing package on the landlord.

Tenant's Response

The tenant stated that it was an utter lie that she went to the neighbour's door with a baseball bat. The tenant also denied shoving the landlord.

The tenant stated that she really wanted to have a meeting with the neighbour, but she couldn't make the meeting so she cancelled on that day. She was going to reschedule the meeting but the noise from her neighbour stopped for a couple of weeks.

The landlord told the tenant that someone was complaining about her, but the landlord would not tell the tenant who it was. The tenant did not have the opportunity to correct her behaviour because the landlord would not tell the tenant what the neighbour was complaining about.

Analysis

I find that the notice to end tenancy is not valid. The landlord did not provide sufficient evidence to establish that there was cause, as cited in the notice to end tenancy, to end the tenancy. The landlord did not have the neighbour appear as a witness in the hearing, so the tenant could not cross-examine the neighbour. The landlord's agent who met with the neighbour did not appear as a witness in the hearing or provide a written statement of her meeting with the neighbour. The tenant denied threatening the neighbour with a baseball bat and shoving the landlord's agent.

As the tenant's application was successful, she is entitled to recover the \$50 filing fee for the cost of her application.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The tenant may deduct \$50, representing her filing fee, from her next month's 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 7, 2012.

Residential Tenancy Branch