



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenants' application to have the One Month Notice to End Tenancy cancelled.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. The tenants provided one page of evidence to this office but did not provide that to the landlords. Therefore the tenants' documentary evidence has not been considered. All admissible evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside?

Background and Evidence

The parties agree that this tenancy started on September 01, 2010 for a month to month tenancy. Rent for this unit is \$900.00 per month and is due on the first day of each month.

The landlords testify that the tenants were served a One Month Notice to End Tenancy on July 26, 2013. This Notice has an effective date of August 31, 2013. A Copy of the Notice has been provided by the landlords in evidence and provides three reasons to end the tenancy as follows:

- 1) The tenant has allowed an unreasonable number of occupants in the unit*
- 2) The tenant or a person permitted on the residential property by the tenant has*
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The landlords testify that the tenancy was for two occupants and the tenants' son has been allowed to stay with the tenants since March, 2013. The landlords testify that they have seen the tenants' son coming and going from the unit on most days since March, 2013. The landlords testify that they have also heard the tenants' son in the unit.

The landlords' testify that the tenants' son has also been receiving mail at the address and when the landlords asked the tenants about this the tenants stated that they were allowed to have visitors. The tenants also said that the son did not live there and they never asked the landlords if their son could stay for extended periods. The tenants' son vehicle is also parked outside on a regular basis. The landlords testify that rent is charged which includes utilities and is based on two people living in the unit. When an extra person lives there then this increases the Hydro bills.

The tenants dispute the landlords' claims. The tenants testify that their son does not live in their unit but does visit regularly to help the tenants out as they are both on disability. The tenants testify that their son will visit two times a week and the male landlord also helps the son out with the sons business. The tenants' testify that this is why some of

the sons mail is delivered to that address as it is things such as bank statements and bills for the sons business for which the male tenant does the bookkeeping.

The tenants testify that as they don't have a vehicle and they use their sons vehicle on occasion and that is why the landlord will see it parked outside. It will also be there when their son is visiting. The tenants provided their sons address at the hearing.

The landlords argue that both tenants are not on disability so why does the son visit so often. The landlords also dispute the reason given for the tenants' son's mail being delivered to the address. The landlords state the tenants could have communicated all this to the landlords.

The landlords' testify that the tenants have allowed the sons puppy to be at their unit. When the landlords e-mailed the tenants about this asking for an explanation instead of communicating with the landlords the tenants went to a community advocate and threatened the landlords with a lawyer. The landlords testify that they received a letter from the tenants advocate concerning accusations about the male landlord verbally abusing the female landlord and the landlords' child. This letter went on to say that they had a legal obligation to report the male landlord to the authorities. The landlords replied to this letter explaining the events. The landlords testify that this was defamation of character and slanderous and could potential cause the landlord s significant harm as the male landlord is a hockey coach. The landlords testify that this has caused the landlords significant emotional harm and has interfered with the landlords' wellbeing.

The landlord TM testifies that he has never hit his child. At the time in question the landlord TM had lost his brother and was coping with grief. The landlord testifies that he did raise his voice to his son but at no time abused anyone.

The tenant ST testifies that they had no idea that the landlord had suffered a loss however the tenant testifies that there was a period of time when voices were raised considerably and this escalated. The yelling from upstairs was extremely alarming. The

tenant WM testifies that the male landlord sounded like he was having a temper tantrum and could be heard stomping his feet and yelling. However after this event the noise continued as the landlords had neighbours over for a party and the noise continued until 11.30. The following night neighbours again came over to the landlords and on the Sunday morning around 8.00 a.m. the male tenant was leaving the unit to walk their son's puppy when the landlord was outside waiting. The landlord accused the tenant of having another dog and the tenant's response was to say that the landlord had better watch out next time he shouts at his son. The tenant testifies that from that conversation all of this trouble has escalated.

The landlord disputes this and testifies that he does not get up at 8.00 a.m. and states he told the tenant that he was not happy about another dog being there. The tenant took the dog and went for a walk.

The landlord BM asks the tenants why the tenants did not come and speak to the landlords if they had concerns instead of going to a third party. The tenant ST responds that they would not approach the landlords due to the animosity. The tenant states it is not her place to intervene in a family matter and they had told the landlords before that they could hear everything from the landlords unit. ST testifies that it is not her place to counsel the landlords. When the tenants went to the advocate's office the advocate asked the tenants if they wanted to file a police report or report the landlords to social services. The tenant testifies that they did neither of these things but just asked for a warning letter to be sent out. After the landlords response to that letter it has gone no further. The tenant testifies that they did not want to be held accountable if anything happened due to abuse.

The landlords testify that the tenants have breached the tenancy agreement addendum by bringing another puppy into the unit. The landlords have provided a copy of the addendum in evidence and this states that the landlord needs to be informed before any pet is brought home. The landlords testify that the tenants did not inform the landlords or ask permission to have the puppy in their unit. The landlords testify that the puppy

was there consistently for three weeks and when the landlords questioned the tenants about it the tenants responded by saying that they were allowed to have guests.

The landlord testifies that an e-mail was also sent to the tenants asking the tenants if they were puppy sitting and to discuss this with the landlords so the length of time could be agreed. The landlord testifies that the tenants feel like they don't have to respond to the landlords' e-mails.

The tenant testifies that their advocate informed them that the landlord has to put it in writing to the tenants if they feel the tenants have breached a term of the agreement or come and speak to the tenants about this. The tenant testifies that the landlord did not do either of these and yet knew the tenants' son's puppy was visiting while the puppy made adjustments due to the puppy's deafness. This arrangement was not for three weeks and the puppy only stayed overnight on two occasions. The puppy would come and visit during the day while their son was finding a suitable dog sitter. The puppy was never left with the tenants all day but just for a few hours here and there.

The landlord asks the tenants if they agree that they signed the addendum to the tenancy agreement about pets and did the tenants inform the landlords. The tenant ST responds that they do agree but this was not the tenants pet, the landlords knew about the puppy being there as they had met the puppy and they did not inform the landlord as the dog did not live with the tenants.

The landlords testify that the tenants have breached the tenancy agreement by running a business from the rental unit. The landlords contacted the City to find out if the tenants had a business licence but found out that no licence is in place. The landlord testifies that the tenants operate a radio business using the landlords' internet and the landlords' address has been used on the tenants' sites. The landlord contends that if anything untoward was to happen with the tenants business it could affect the landlords as it is the landlords address being used.

The tenants dispute the landlords' claims. The tenant ST testifies that they do not operate a business from their home. What the tenants offer is a radio service for advice for counsellors. The tenants testify that no money exchanges hands and they also write software programs as a service for the community not as a business. The tenants' testify that this is more in line with a hobby but is not a business and therefore no business licence is required.

The tenants testify that the address is not on their website and as they don't have a separate mailbox and the address on their lease does not indicate basement unit they simply use the address of the home when obtaining their domain names.

The landlords' testify that this is a non smoking residence and yet the male tenant has been seen smoking on the property. At the start of the tenancy the tenants and landlords had a verbal conversation about the male tenant smoking and the tenants agreed he would smoke on the property on the street. Overall the male tenant abides by this but he has been seen smoking outside the unit and cigarette butts have been found on the back stairs as shown by the landlords' photographic evidence.

The tenant ST testifies that they know this is a non smoking property. The male tenant never smokes on the property but has occasionally smoked an e-cigarette outside. The tenants' testify that after one of the landlords' parties some of the landlords' guests were smoking and they threw their cigarette butts down on to the concrete the tenants use. The tenant testifies that she picked up these butts and placed them on the stairs. These are the same butts shown in the landlords' photographs.

The tenant agrees they received an e-mail from the landlords about the smell of smoke but a responding e-mail was sent back explaining that the tenant had burnt a pan while cooking.

The landlords orally request an Order of Possession for October 31, 2013.

The tenant request that the Notice to End Tenancy is set aside.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As the landlords have served the tenants with a One Month Notice to End Tenancy then the burden of proof falls to the landlords to provide sufficient evidence to support the reasons given on that notice. Therefore I will address each reason.

With regard to the landlords reason that the tenants have allowed an unreasonable number of people in the rental unit; the landlords argue that the tenants' son has been living in the unit. The tenants argue that their son simply visits regularly. The landlords have provided insufficient evidence to show that the tenants' son has been residing in the rental unit and therefore as both explanations sound probable then the landlords have not met the burden of proof in this matter.

With regard to the landlords reason that the tenants have significantly interfered with or unreasonably disturbed the landlord by going to an advocate to report the male landlord for abusive; In this matter, as explained during the hearing, the tenants have a right to either seek advice or report suspected abusive of a minor child. The landlords have raised concerns that this is libelous or a defamation of the male landlord's character. As this matter is not out in the public forum then I have no concerns that the tenants did the right thing in seeking advice from an advocate and requesting a letter to be sent out to the landlord. As the landlords response to this letter was satisfactory to explain the events then no further action was required by the tenants or their advocate at that time. I therefore find this reason to end the tenancy is unwarranted.

With regard to the reason that the tenants have breached a material term of the tenancy agreement which was not corrected after written notice to do so; the landlords have never provided the tenants with a formal written notice to either remove the puppy from the unit, to obtain a business license or to stop smoking on the property. Furthermore I find the tenants explanations to be reasonable that the tenancy agreement does not state that no visiting dogs maybe in the tenants unit, or that the tenants may not operate a business from the unit. I am also not satisfied that the tenants are even operating a business and I have asked the tenants to clarify this with the City and provide either a business license if one is required or a letter from the City showing that a business license is not required. This information must be provided to the landlords as soon as possible. I also find the tenants' explanation of the smoking issue to be reasonable and the landlords' evidence of cigarette butts could be likely to be those of the landlords guests.

Consequently, I find the landlords have not met the burden of proof for any of the reasons shown on this Notice to End Tenancy and the Notice is set aside.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause served on, July 26, 2013 is cancelled and the tenancy will continue.

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: September 11, 2013

Residential Tenancy Branch

