



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUDSON MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC, CNC, FF

Introduction

This hearing dealt with applications by the landlord and the tenants, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenants applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy at this unit started in August 2013. On November 30, 2013, the landlord served the tenants with a notice to end tenancy for cause. The reasons for the notice were that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and have seriously jeopardized the health and safety and a lawful right or interest of another occupant or the landlord.

The landlord stated that she received complaints from other occupants regarding noise disturbances and the use of marijuana by the tenants. The landlord called on two witnesses. The first witness (DM) stated that he occupied a unit above the tenants and suffers from a lung condition that requires him to use bottles of Oxygen. DM stated that the smoke from the use of marijuana affects his lungs and he has made at least two complaints to the manager of the building, but the activity continues.

The second witness (GT) stated that the tenants cause noise disturbances at all hours of the night by slamming the patio door multiple times. GT also complained of the smell of marijuana that enters his rental unit located above the tenant. This witness stated that he made three complaints to the owner and at least five to the manager.

The manager testified that he had received these complaints but did not address them directly with the tenants, for fear of retaliation. He stated that the tenants specifically told him not to contact them and not to knock on their door. The manager stated that the only action he took was to inform the owner about the complaints received.

The owner stated that the tenants harass the manager by sending multiple text messages containing threats. The owner filed copies of the messages. She also stated that she was forced to hire a separate manager to take care of this unit as the current manager was unable to cope with the conduct of the tenants.

The owner stated that the tenants were given verbal warnings by the manager, but the manager stated that he had not addressed any of the problems with the tenants. The tenants stated that they did not receive any warnings from the landlord. During the hearing, the tenants agreed to refrain from disturbing other occupants, by slamming doors or smoking marijuana on the balcony.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord and /or seriously jeopardized the health and safety and a lawful right or interest of another occupant or the landlord.

Based on all the evidence before me and the sworn testimony of the landlord, her witnesses, the manager and the tenants, I find that the tenants smoke marijuana which causes health problems for other occupants and the tenants create noise disturbances during the night by slamming doors. I further find that the tenants were not notified of the complaints made by other tenants and were not given any form of verbal or written warning that such behaviours were unacceptable. Therefore, I find that since the tenants were not put on notice regarding their disruptive and unacceptable behaviour, they were not given an opportunity to correct this behaviour.

I therefore allow the tenants' application and set aside the landlord's notice to end tenancy dated November 30, 2013. As a result, the tenancy shall continue in accordance with its original terms.

The tenants would be wise to refrain from giving the landlord and the other occupants of the building, reason to complain about the tenants' use of marijuana inside the rental unit or in the common areas of the building. The tenants would also be wise to refrain from causing noise disturbances.

I find it timely to put the tenants on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Since the landlord has not proven her case, she must bear the cost of filing her application. The notice is set aside and therefore the tenant is entitled to the recovery of the filing fee. The tenants may make a onetime deduction of \$50.00 from a future rent.

Conclusion

The notice to end tenancy is set aside 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: January 23, 2014

Residential Tenancy Branch