Decision

Dispute Codes: CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated August 12, 2008. Both parties appeared and gave affirmed testimony in turn. An advocate for the tenant and a witness for the tenant, also appeared.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had "*significantly interfered with or unreasonably disturbed another occupant or the landlord*" and that the security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Issue(s) to be Decided

The tenant is disputing the basis for the notice and the issues to be determined based on the testimony and the evidence are:

- Whether the criteria to support a One-Month Notices to End Tenancy under section 47of the *Residential Tenancy Act*, (the *Act*), has been met, or whether the notice should be cancelled on the basis that the evidence does not support the cause shown.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated August 12, 2008 showing an effective date of September 12, 2008, indicating that the tenant has significantly interfered with or

unreasonably disturbed another applicant or the landlord and that the tenant has failed to pay the security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

Failure to Pay Pet Damage Deposit

The landlord testified that there was a discussion about the tenant's cats at the time the tenant moved into the unit in June 2008, and that the tenant had told the landlord that she did not have her cats with her but may be bringing them at a later date. The landlord testified that the tenant was advised that if she did bring the pets, she must pay the pet damage deposit within 30 days.

The tenant testified that there was a discussion about the tenant's cats when she moved into the unit. However the tenant stated that they agreed that the tenant was not required to pay a pet damage deposit. The tenant pointed out that the landlord had not pursued this issue prior to now and only brought up the pet deposit issue for the purpose of this application.

I note that the matter of a pet damage deposit was, according to the testimony, a term covered by the tenancy agreement which signed by the parties. However, neither party has submitted into evidence a copy of this tenancy agreement showing the term in question. Both parties have given testimony that in addition to the written tenancy agreement, there was a discussion about why the pet deposit was not immediately required. However the tenant and the landlord offered different versions about what was actually said. Section 6(3)(c) of the Act states that when terms in a tenancy agreement are unclear, they cannot be enforced. I find that the absence of a copy of the tenancy agreement and the conflicting testimony about the content of the verbal discussion on this subject, make this term too vague to interpret and impossible to enforce. As the burden of proof is on the landlord to justify the Notice to End Tenancy, I find that the landlord has not established sufficient evidence that the tenant's failure to pay the pet damage deposit was in violation of the agreement and therefore this matter does not constitute "cause" to support the Notice to End the Tenancy.

Significant Interference and Unreasonable Disturbance

In regards to the landlord's allegations that the tenant caused repeated noise disturbances, particularly to the resident directly below the tenant's suite, the landlord testified that verbal complaints have also come in from other occupants in the complex as well which relate to the tenant playing music late into the night, slamming of doors and thumping. The Landlord testified that repeated verbal warnings were given to the tenant and two formal written warnings, were also issued, but that these measures only resulted in a temporary improvement, after which the conduct began again. The landlord submitted into evidence copies of the two warning letters that had been sent to the tenant. One was dated June 22, 2008 relating to complaints from the occupant below and the other was dated July 24, 2008 relating to complaints from both the occupant below and an adjacent occupant. The landlord also submitted a copy of a written communication signed by the occupant of the suite below dated August 24, 2008. However, this evidence was not served on the tenant within the deadline, and as such was not accepted into evidence for the purpose of this determination.

The tenant testified that the noise complaints are completely without foundation.t. The tenant testified that on some of the dates that complaints about noise were made, she was not at home. The tenant also testified that on one occasion the tenant below her unit banged on ceiling at a time when no noise was being made at all. The witness for the tenant testified that he was present when this incident occurred and supported the tent's testimony that she was studying, not making any noise, when the tenant below suddenly began banging on the ceiling.

Analysis

While I accept the landlord's testimony that complaints were made about the noise and that written warnings were issued, I also note that the landlord had not directly witnessed the allegedly excessive noise himself, but was rightfully responding to complaints that were made by the neighbouring occupant. I must point out that under the Act, tenants are not required to be absolutely silent.

However the activities of a tenant must not significantly interfere with nor unreasonably disturb other occupants. I note that the perception of what level of noise is “reasonable” can be influenced by the sensitivity or subjectivity of a particular occupant. In addition, exposure to noise between units can depend upon the age and structure of the building in relation to how sound carries or what floor covering is used. The fact is that some complexes are more sound-proof than others. Diversity in terms of lifestyle is also a factor. For example a shift worker may be active during a period of time when another occupant accustomed to keeping typical hours may expect things to be totally quiet.

If the complaint is based on a resident merely being able to detect the usual sounds of normal living, such as music set at normal volume, voices in conversation, footsteps or doors closing, this would not suffice to qualify as an unreasonable disturbance. However if the music was being played at a high volume after hours such that it awakened adjacent tenants; if the conversation included shouting; if the footstep sounds came from jumping, rather than walking; or if the doors were being forcefully slammed; then such noise would likely be considered as being significantly intrusive to the point that this created an unreasonable disturbance.

In this instance, the resident in the unit below the tenant was the primary complainant and was described by the landlord as a senior gentleman who has been long-term resident for approximately 15 years. According to the landlord, this individual is not known to be a chronic complainer nor has he exhibited an oversensitivity to noise in the past. The landlord stated that relocating the applicant/tenant is not a viable option. Moreover, there has been more than one resident complaining.

On the other hand, the tenant and the witness for the tenant have testified that the resident in the unit below expressed annoyance by knocking on the ceiling when no noise was being made and also lodged a complaint about being disturbed during a period of time when the tenant was not at home. The tenant introduced the possibility that the sounds being complained about could possibly

be coming from another unit. I note that the fact that the tenant was working, what she called, the “graveyard shift”, would also entail activity in the unit at times of the day that other residents were not accustomed to.

There is no doubt that one or more resident has been disturbed. But the question of whether or not there has been significant interference and unreasonable disturbance is not an easy determination to make with the conflicting testimony before me. I must point out that first-hand testimony from the landlord having personally witnessed the noise being reported would have added some evidentiary weight to support the Notice being issued.

In light of the fact that the tenant is now aware that she will be held accountable and fully accepted that disturbing other residents could place the future of this tenancy in serious jeopardy, I will agree with some reservation to cancel this notice to end tenancy. I do, however, feel that I must caution the tenant that excessive noise which disturbs other occupants, should it occur in future, could be a valid basis for the landlord to end this tenancy. I also encourage the landlord to investigate reports of excessive noise by on-site observation, if at all possible, in order to confirm the level of disturbance as accurately as possible.

Conclusion

Based on the above, I hereby order that the One-Month Notice to End Tenancy of August 12, 2008 be cancelled and of no force nor effect.

September 16, 2008 _____