



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNC

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The Agent for the Landlord and the Tenants agree that this tenancy began on December 01, 2007.

The Agent for the Landlord and the Tenants agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenants, which indicated that the Tenants were required to vacate the rental unit on September 30, 2008. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

In written statements the tenant occupying unit 211, which is adjacent to the Tenants, reported the following disturbances and concerns:

- When the Tenants moved in on December 01, 2007 they made noise until 4:30 a.m., which included walking up the stairs, slamming doors, opening and closing the balcony door loudly, and talking loudly
- On December 09, 2007 at 3:00 a.m. they played loud music for approximately twenty minutes
- On December 09, 2007 at 5:00 a.m. it sounded like they were kicking or hitting the walls, using profanity and talking loudly in the court yard

- On December 12, 2007 at 11:00 p.m. they were talking loudly in the court yard
- On the late evening of December 12, 2007 they were walking loudly, slamming doors, screaming and making loud "sex" noises, that lasted until 1:00 a.m. on December 13, 2007
- On December 31, 2007 they were yelling, screaming, and kicking, which lasted until January 01, 2008 at 06:00 a.m.
- On May 22, 2008 loud "sex" noises were emanating from the rental unit at 1:00 a.m.
- After midnight on May 23, 2008 they walking loudly, talking loudly, and slamming doors
- On May 24, 2008 at 2:30 a.m. they were making party noises until 2:30 a.m. and they were opening and closing the balcony window loudly several times
- On May 28, 2008 loud "sex" noises were emanating from the rental unit at 1:00 a.m.
- On May 30, 2008 at 2:00 a.m. they were slamming doors, walking loudly, and talking loudly
- On August 02, 2008 the Tenants were playing loud music, talking loudly, walking loudly, opening and closing their balcony window loudly, and closing closet doors loudly, which lasted until 7:00 a.m. on August 03, 2008
- That the noise from the Tenants causes them to lose sleep, often for several hours after the noise has stopped
- That the noise from the Tenants cause them enormous mental stress
- They want the Tenants evicted.

The Agent for the Landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- He verbally advised them that their behaviour was disturbing other tenants on two occasions during the month of December
- He gave them a letter, dated January 07, 2008, in which he advised them that their behaviour was disturbing other tenants, and in which he directed them to refrain from making loud noises
- He did not receive any further noise complaints from the adjacent tenants until May of 2008
- He spoke with the Tenants regarding the continue noise complaints on August 04, 2008, at which time he told them they were being evicted
- He has received no complaints regarding these Tenants from anyone other than the occupants in unit 211
- That there are tenants living below the Tenants, but not above them
- That the Tenants live on an end unit, with unit 211 on one side and a separate building on the other side
- That the occupants in 211 have not made noise complaints about other occupants.

The Tenants presented the following evidence and arguments in support of their application to cancel the Notice to End Tenancy for Cause:

- That their living room is directly above the occupants in 110, who have never complained about them slamming doors or walking loudly
- That their balcony door is so close to the adjacent building that the occupants of that building would be disturbed if they were closing it loudly, yet they have not complained about the noise
- That there is an entrance to the residential complex directly below their rental unit, which bangs loudly
- That they do not make an unreasonable amount of noise by making music, banging doors, talking loudly or walking loudly
- That neither Tenant has been awakened by the other Tenant having sex
- That they did not have a party on August 02, 2008, although there were two parties going on in other rental units that evening, which had spilled out onto the courtyard

Analysis

After considering all of the written and oral evidence submitted at this hearing, I have determined that the Landlord has not satisfied the legislative requirements to end a tenancy for cause. Specifically, I find that the Landlord has not established that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although it is clear that the occupants in unit 211 are disturbed by noise emanating from the Tenant's rental unit, I am not satisfied that the noise the Tenants are allegedly making can be considered an unreasonable disturbance or a significant interference, as is required by the legislation. In reaching this conclusion I was partially influenced by the fact that much of the noise that is disturbing the occupants in unit 211 caused by normal daily living activities in the Tenant's rental unit, such as walking, talking, closing doors and having sex. Although there have been some disturbances with loud music during the late evening early morning hours, this does not appear to be the primary source of the disturbances. Without evidence that clearly establishes the noise from the daily living activities is excessive, I find that there is insufficient evidence to conclude that the Tenants have caused an unreasonable disturbance or a significant interference.

In reaching this conclusion, I was strongly influenced by the Tenant's argument that no noise complaints have been received from other occupants. Given the close proximity of the other neighbours, particularly those living below the Tenants, I would expect that

the Tenants noise would be disturbing other occupants if the noise was excessive or unreasonable.

Conclusion

As I have determined that the Landlord has not satisfied the legislative requirements to end a tenancy for cause, I am setting aside the One Month Notice to End Tenancy for Cause dated August 05, 2008, pursuant to section 68(2)(b) of the *Act*, and I find that the tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants have been advised that further disturbances may be cause to end this tenancy in the future, particularly if a third party, such as the Agent for the Landlord, can substantiate that the noise emanating from their rental unit is unreasonable.

Date of Decision: September 08, 2008
