



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's request to cancel a *1 Month Notice to End Tenancy for Cause* and to recover the filing fee from the landlord. Both parties appeared at the hearing and were provided the opportunity to respond to the other party's submissions.

Issues(s) to be Decided

1. Whether the landlord has established sufficient grounds to end the tenancy for cause?
2. Award of the filing fee.

Background and Evidence

Upon hearing the testimony of both parties, I make the following findings. The tenancy agreement was formed January 25, 2008. The rental unit is a condominium unit and is occupied by the tenant, his wife and two children. The landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause* on May 30, 2009 or June 1, 2009. The Notice indicates the reasons for ending the tenancy are 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, and
 - put the landlord's property at significant risk

The landlord testified that on March 20, 2009 the landlord called the resident manager about an unrelated issue and heard from the resident manager that he has received complaints about loud piano playing coming from the rental unit. The landlord stated she phoned the tenant March 24, 2009 and gave the tenant a verbal warning about the noise level. On May 4, 2009 the landlord attended the rental unit to fix a plumbing fixture and the tenant gave the landlord mail addressed to the landlord. In the mail was a letter from the property management company that acts for the strata corporation dated February 3, 2009 which described the loud noises coming from the unit and possibility of imposing fines upon the owner.

A copy of the letter of February 3, 2009 was provided as evidence for the hearing. The letter provides that piano playing is heard emanating from the rental unit between

6:00 to 8:00 p.m. daily and banging and children screaming in the early morning hours and late evening hours. The letter requires the landlord to lessen the amount of noise coming from the rental unit immediately and that the landlord can respond to the letter in the event she disagrees with the particulars within 14 days of the date of the letter.

The landlord alleged she called the resident manager several times after learning about the noise issue and the resident manager confirmed that the noise continued to be an issue so the landlord served the tenant with the Notice.

The tenant testified that before entering the tenancy he and his family viewed the rental unit and informed the landlord that he had two children and one of his children played the piano and that the landlord did not appear concerned about it. The tenant stated that he had received a verbal complaint from the resident manager and the property manager about the piano playing so he approached the downstairs neighbour about agreeing upon practice times. When the landlord phoned to give the verbal warning he told the landlord the issue had been addressed with the neighbour. The tenant affirmed that his son plays the piano for one to one and a half hours per evening between the hours of 6:00 and 8:00 p.m. The tenant's other son is at daycare until 6:00 p.m. and in bed by 10:00 p.m. The tenant stated he is not aware of any strata by-laws prohibiting piano playing and does not believe playing between 6:00 and 8:00 p.m. is unreasonable. The tenant also pointed out that since the landlord had not changed her address with the strata corporation and did not pick up her mail until May 4, 2009 the landlord missed the opportunity to respond to the letter of February 3, 2009 within the 14 days permitted.

The landlord also produced an email allegedly written by the former downstairs neighbour. The tenant objected to the email as he could not verify the email address of the person that sent it. The landlord confirmed that the former neighbour had listed her unit for sale March 30, 2009 and has since sold the unit. The landlord stated that she did not have a phone number for the former neighbour and the neighbour did not appear at the hearing as the landlord's witness. The landlord confirmed that she has not been fined by the strata corporation for noise bylaw violations.

Analysis

The onus of burden of proof is upon the landlord to prove there are reasonable grounds to end the tenancy for the reasons given on the Notice to End Tenancy. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, the party with the burden has not met the burden of proof on a balance of probabilities.

The tenant does not deny that his son plays classical music and I accept as fact that the tenant's son plays the piano between the hours of 6:00 p.m. and 8:00 p.m. daily for a period of one to one and a half hours. At issue is whether the piano playing is so loud and occurs so frequently that it unreasonably disturbs other occupants. I do not find the piano playing puts the landlord's property at significant risk and I do not consider that a reason for ending the tenancy.

Upon review of the letter of February 3, 2009 from the property managers I note that there is reference to "a complaint", and I interpret that to mean one complaint. Based on the evidence before me, I find it likely that the complaint was lodged by the former downstairs neighbour. Since the former neighbour has moved out of the building, the property managers had not produced any further written warnings after February 3, 2009 and the resident manager did not appear as a witness, I am not satisfied that the sounds coming from the rental unit were unreasonably disturbing other occupants at the time the Notice to End Tenancy was issued.

As the former neighbour to the rental unit did not appear at the hearing, the former neighbour could not be questioned as to what she witnessed or experienced and I found the email allegedly written by that neighbour not sufficiently detailed for me to make a determination that the tenant is responsible for unreasonably disturbing another occupant.

While I appreciate playing the piano can be rather loud, in the absence of any other evidence that it is significantly disturbing to other occupants, I do not find the landlord has met the burden of prove in this matter. Nor do I find disputed evidence to be sufficient evidence that the sounds coming from the other son to be more excessive or unreasonable than noises normally generated by a toddler.

In light of the above findings, I cancel the Notice to End Tenancy dated June 1, 2009 with the effect that this tenancy continues. I award the filing fee to the tenant. The tenant is authorized to reduce a subsequent month's rent by a one-time deduction of \$50.00 in satisfaction of this award.

Conclusion

The Notice to End Tenancy is cancelled with the effect that this tenancy continues. The tenant is awarded the filing fee and may deduct \$50.00 from a subsequent month's rent.



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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: July 15, 2009.

Dispute Resolution Officer