



Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: CNC, MT, FF

Introduction

This was an application by the tenant to cancel a Notice to End Tenancy for cause. The Notice to End tenancy was served on an adult person at the rental unit on September 29, 2008. The tenant filed the application for dispute resolution on October 2, 2008, however he did not promptly serve it on the landlord, and then only served an incomplete copy on October 14, 2008. The hearing of the tenant's application was conducted by conference call. The tenant participated in the hearing. The landlord participated; her husband was present and the landlord's son was a witness.

Background and evidence

The tenancy began in June, 2004. The rental unit is a suite in an older house; there are tenanted suites above and below the rental unit. The landlord's son is the tenant who occupies the lower suite.

The grounds stated in the Notice to End Tenancy issued by the landlord were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord; had seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that he had put the landlord's property at significant risk. The landlord provided a written statement, documents, photographs and statements in support of the alleged grounds for ending the tenancy.

The landlord has a number of complaints, but I will address only the most recent of these allegations. In June, 2008 the tenant kept a large German shepherd dog in the rental unit, contrary to the terms of the tenancy agreement that prohibited pets. The tenant kept the dog for more than a month despite demands from the landlord; he

removed the dog from the rental unit only after it caused a serious disturbance to other tenants and neighbours when it was left unattended in the rental unit.

In July 2008 the tenant placed a large inflatable pool in the back yard of the rental unit. He filled the pool but left it unattended. The pool collapsed and flooded the downstairs rental unit, damaging the flooring in the rental unit.

The tenant operates a renovation contracting business; he has been storing or discarding construction remnants and debris on or adjacent to the rental property. The tenant did not act to clean up the material until he was served with the Notice to End Tenancy.

The tenant occupies the rental unit with his girlfriend; he has a third person living in the rental unit. According to the tenant the third person is only a temporary occupant, but she has been living in the unit for several months. The tenancy agreement provided that there shall be no more than two persons occupying the rental unit as permanent occupants.

The landlord's son and his girlfriend who occupy the lower unit have complained about the tenant's noisy parties; these occur about once per month and continue until 2:00 or 3:00 A.M. The most recent was on September 28, 2008. The landlord's son called the tenant at 3:00 A.M. The tenant was not at home but said that he would try to have whoever was in his apartment turn down the music.

During the hearing the tenant acknowledged the occurrence of these incidents. The tenant has explanations for each of the events. Concerning noise complaints the tenant asserted that the rental property house with poor sound insulation. He testified that he hears noise from the other tenants, but he did acknowledge that the parties he has hosted have continued into the early hours of the morning.

Analysis and conclusion

The tenant has explanations for the landlords other complaints; they are set out in his written submission. The tenant's explanations are, however, merely excuses; they do not alter the fact that the events complained of constitute breaches of the tenancy agreement and grounds to end the tenancy.

I am satisfied on the evidence before me that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that he has put the landlord's property at significant risk. I find that the events complained of and acknowledged by the tenant do justify the Notice to End Tenancy. I accept the landlord's submission that she has been indulgent toward the tenant in the past, but the cumulative effect of the events complained of, not all of which have been catalogued in these reasons, make the continuation of his tenancy intolerable for the landlord and the tenants beneath him; I therefore decline to set aside the Notice to end Tenancy and I dismiss the tenant's application. At the hearing the landlord requested that I issue an order for possession in the event the tenant was unsuccessful on his application. The Notice issued by the landlord required the tenant to vacate the rental unit on or before October 31, 2008. Section 55 (3) of the *Residential Tenancy Act* permits me to grant an order for possession at the landlord's request and permits me to specify the effective date of that order. Since the hearing of this application occurred only yesterday, it would be unreasonable to make the order for possession effective today. I grant the landlord's request for an order for possession, but it will be effective November 30, 2008 after service on the tenant. This order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed without leave to reapply.

Dated October 31, 2008.