

Dispute Codes:

CNC and FF

Introduction

This hearing was scheduled in response to the Tenant's application to set aside a Notice to End Tenancy for Cause and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

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 relevant oral evidence, to ask relevant questions and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside and whether the Tenant is entitled to recover the filing fee from the Landlord for this Application for Dispute Resolution.

Evidence

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant indicating that the Tenant was required to vacate the rental unit on February 28, 2009. Although the Notice to End Tenancy was not submitted in evidence the parties agree that the only reason cited for ending the tenancy on the Notice to End Tenancy was 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, pursuant to section 47(2)(d)(i) of the *Act*.

The Landlord presented the following evidence and arguments that is relevant to this Notice to End Tenancy for Cause:

- The building manager stated that sometime between October and December of 2007 the Tenant's son was heard yelling and using profanities inside the subject rental unit. The building manager verbally advised the Tenant that the behaviour was inappropriate
- The building manager stated that the Tenant's son was heard yelling and using profanities inside the subject rental unit, sometime in September of 2008. As a result of that incident the Landlord sent the Tenant a letter

reminding her of her obligation to respect the quiet enjoyment of other occupants

- The Landlord submitted a letter, dated September 25, 2008, in which the Landlord made reference to being verbally advised on two previous occasions about her son's yelling and use of profanity. At the hearing, the building manager acknowledged that there had only been one previous verbal warning regarding the son's behaviour
- The building manager acknowledged that there have been no further complaints regarding the Tenant's son since the letter was sent on September 25, 2008
- The building manager stated that on Thanksgiving Day she received a complaint from an occupant of the residential complex regarding loud music in the subject rental unit. She stated that she advised the Tenant to reduce the volume of her music, at which time the Tenant complied
- The building manager stated that she received a second complaint from an occupant of the residential complex regarding loud music in the subject rental unit and she again advised the Tenant to reduce the volume of her music, at which time the Tenant complied
- The building manager stated that she received a third complaint from an occupant of the residential complex regarding loud music in the subject rental unit in December of 2008, at which time the Landlord issued the Tenant with a written warning regarding her obligation to respect the quiet enjoyment of other occupants
- The Landlord submitted a letter, dated December 22, 2008, in which the Tenant was advised that a neighbour has been disturbed by her sound system. This letter indicates that the neighbour and the resident manager has discussed the matter with the Tenant, although there is no mention that the resident manager discussed the problem with her on two occasions
- The building manager acknowledged that there have been no further complaints regarding the noise from her sound system since the letter was sent on December 22, 2008
- The building manager stated that the Tenant complained about noise from rental unit 206 on December 26, 2008 at approximately 01:30 a.m.
- The building manager stated that she went to unit 206 and advised them to reduce the noise levels, which they did
- The building manager stated that she received a second complaint from the Tenant regarding noise from rental unit 205 at 3:15 a.m. on January 10, 2009. She stated that the Tenant was very upset and was using profanity. She stated that she was out of town so she suggested the Tenant personally speak with the occupants in unit 206
- The Landlord submitted a letter from an occupant who lives in unit 205, who stated that she was awakened at approximately 3:15 a.m. on January 10,

- 2009 by the sound of loud banging on the door of unit 206 and the sound of a male and female arguing
- The Landlord submitted a letter from an occupant who lives in unit 204, who stated that, was heard loud banging and shouting between 2:30 and 3:00 a.m. on January 11, 2009. She opened the door and the Tenant who is the subject of this dispute swore and asked her if she was responsible for the noise that was disturbing her
 - The Landlord submitted a letter from the occupant who lives in unit 206, who stated that the Tenant who is the subject of this dispute came to his door at approximately 3:20 a.m. on January 11, 2009 and accused him of making noise. He stated that she was swearing and yelling. He stated that he had been out all night and that he had just arrived home.
 - The Landlord submitted a letter from the relief building manager who stated that he heard a knock on his front door at approximately 3:30 on December 11, 2008. From the information contained in his letter, I presume he meant January 11, 2009. He stated that he did not get out of bed immediately and by the time he got to the door there was nobody there.

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

- The Tenant agrees that her son behaved inappropriately in September of 2008, but she denies that she was verbally warned about his behaviour prior to the incident in September
- The Tenant stated that her son has not lived with her since December 31, 2007 and that after receiving the written warning regarding his behaviour she advised him that he was not welcome back at her home if he behaved inappropriately again
- The Tenant stated that her son has not disturbed other occupants since the single incident in September of 2008
- The Tenant agrees that she was asked to turn down the music on Thanksgiving of 2008, but she denies receiving any other verbal warnings about her sound system
- The Tenant stated that she purchased a new television around Thanksgiving of 2008 and she was having difficulty adjusting the level of the base on the television
- The Tenant stated that since she turned off the base on her television, which she believes has resolved the problem
- The Tenant stated that she has been disturbed on a regular basis by the occupants of unit 206
- The Tenant stated that she reported her concerns about the occupants of unit 206 on December 25, 2008

- The Tenant stated that she was awakened by the occupant in unit 206 at approximately 2:00 p.m. on January 10, 2009
- The Tenant stated that she phoned the building manager to report the noise complaint, who advised her that she was out of town and recommended that she speak directly to the occupant in unit 206
- The Tenant stated that she knocked on the relief manager's door with the intent of asking him for assistance, but he did not answer his door
- The Tenant stated that she then went to unit 206 and knocked on his door. She stated that she subsequently knocked very loudly after the occupant failed to respond to her first attempts. She agrees that she was very upset at this time and that she was very loud when she told the occupant that he was disturbing her.

Analysis

The undisputed evidence is that the Tenant's son caused a disturbance by yelling and using profanity inside the rental unit on one occasion in September of 2008, for which she was issued a written warning. After hearing the contradictory evidence about her son causing a disturbance in 2007, I find that the Landlord has submitted insufficient evidence to establish that the son also caused a disturbance in 2007 by yelling and using profanity. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as written records, that corroborates the building manager's statement that an incident had occurred in 2007.

I find that the single disturbance caused by the Tenant's son is not significant enough to end this tenancy. In reaching this conclusion, I was strongly influenced by the fact that the son does not reside in the rental unit and by the fact that the son has not caused further disturbances since the Tenant received the written warning in September of 2008.

The undisputed evidence is that the Tenant caused a disturbance by playing music loudly on Thanksgiving Day in 2008. The evidence shows that the Tenant complied with a request to turn down the music on that date. After hearing the contradictory evidence about a second verbal warning for noise, I find that the Landlord has submitted insufficient evidence to establish that the Tenant received more than one verbal warning. In reaching this conclusion, I was strongly influenced by the absence of documentary evidence, such as written records, that corroborates the building manager's statement that two verbal warnings were given.

I find that the two noise disturbances are not significant enough to end this tenancy. In reaching this conclusion, I was strongly influenced by the fact that the Tenant immediately complied with the first request to reduce the noise, the evidence does not

establish that the behaviour is persistent and repetitive, and there have been no further incidents since the Tenant received the written warning in December of 2008.

The undisputed evidence is that the Tenant caused a significant disturbance in the early morning hours of January 10, 2009 or January 11, 2009 when she banged loudly on the front door of the unit 206 and initiated a loud argument with the occupant of that unit. The evidence clearly shows that the Tenant's behaviour also disturbed the occupants units 204 and 205.

I find, on the balance of probabilities, that the occupant of unit 206 contributed to the disturbance by awakening the Tenant in the early morning hours. Although the occupant of unit 206 denies being loud, he acknowledges that he did arrive home shortly before this disturbance and that he was in the process of cooking food, which could have disturbed the Tenant.

The undisputed evidence is that the Tenant was very angry when she reported the disturbance in unit 206 to the building manager and asked her to rectify the matter. The building manager advised her that she was out of town and suggested that she speak directly with the Tenant.

The undisputed evidence is that the Tenant knocked on the door of the relief building manager with the intent of requesting his assistance. The undisputed evidence is that the relief manager did not immediately respond to the knock on the door, so the Tenant went to unit 206 and became involved in a loud argument.

Although I find that that the Tenant created a significant disturbance on January 10, 2009 or January 11, 2009, I find that the Landlord contributed significantly to this disturbance by not responding to the complaint and by directing the Tenant to personally speak with the occupant in unit 206. In reaching this conclusion, I was considered the following:

- The building manager knew how upset the Tenant was when she reported this incident, yet she did not offer to telephone the occupant of unit 206
- The building manager knew how upset the Tenant was when she reported this incident, yet she did not offer to contact the relief manager on behalf of the Tenant
- The building manager knew how upset the Tenant was when she reported this incident, yet she suggested that the Tenant speak personally with the occupant of unit 206. I find that the building manager should have anticipated that the encounter could have resulted in an argument between the two residents.

Although I find that the disturbance created by the Tenant on January 10, 2009 or January 11, 2009 was quite significant, I find that the Landlord significantly contributed to the disturbance by suggesting that the Tenant speak directly to the occupant in unit 206. As the Landlord indirectly contributed to the disturbance in January, I find that the tenancy should not end as a result of this disturbance. In reaching this conclusion, I was

strongly influenced by the evidence that shows that the Tenant sought the assistance of the building manager and the relief building manager before she met directly with the occupant of unit 206.

Conclusion

I find that the Landlord has submitted insufficient evidence to establish there are grounds to end this tenancy pursuant to section 47(2)(d)(i) of the Act. I therefore set aside the One Month Notice to End Tenancy, dated January 19, 2009, and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from her next rent payment, as compensation for the filing fee she paid for this Application for Dispute Resolution.