Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

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 January 10, 2010. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that The One-Month Notice to Notice to End Tenancy for Cause, alleged that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

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 is whether the criteria to support a One-Month Notice 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.

Preliminary Issue

The landlord testified that it had submitted a substantial amount of evidence supporting the Notice for Cause. However this was apparently delivered to the Residential Tenancy Branch the day before yesterday and according to the tenant, she had only received the package the day before the hearing.

Rule 4.1 requires that , if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents and other evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

In some cases the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met and if this is the case, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

If copies of the respondent's evidence are not received by the Residential Tenancy Branch or served on the applicant as required, the Dispute Resolution Office must apply Rule 11.6 to evidence the respondent presents at the dispute resolution proceeding. I found that an adjournment of the proceedings was not warranted under the Act and would merely serve to delay the proceedings.

Accordingly the hearing proceeded with the respondent giving verbal testimony in regards to the Notice.

Background and Evidence

The tenancy had begun in another unit in February 2003 a deposit was paid in the amount of $700.00 and rent is $1,125.00. The tenant had submitted into evidence a copy of the One-Month Notice to End Tenancy for Cause dated January 10, 2010 showing an effective date of February 28, 2010. The tenant has also submitted written testimony two letters from other occupants in the building testifying that the tenant had not disturbed them. The tenant testified that she was being unfairly persecuted by another resident in the complex and that she has taken every precaution to keep things quiet. The tenant's position was that the One-Month Notice was not justified and should be cancelled.

The landlord's testimony dealt with a long history of complaints about noise and disturbances caused by the tenant dating back several years and the landlord gave some examples of the dates and nature of the complaints, which are logged and kept on record. The building manager testified that he has spoken or written to the tenant approximately 27 times in regards to complaints from other residents.

More recently, according to the landlord, there were noise complaint incidents in August and September 2009. The landlord testified that, on November 22, 2009, the weekend manager reported in writing an incident of yelling and arguing at 1:15 a.m. after which the tenant was spoken to.

The tenant acknowledged she and her friend had engaged in a "heated discussion" and admitted that this was discussed with the weekend manager, Jody, who cautioned her about disturbing others.

The landlord testified that on December 3 2009 at 3:00 a.m. there was a serious incident of loud fighting yelling and noise in the tenant's unit that prompted another resident to contact the building manager. The building manager testified that he personally went to the hallway outside the unit and heard the commotion

at which time he contacted the police, fearing possible domestic violence. The landlord testified that later on this incident was discussed with the tenant and the tenant argued that there was no violence and that it was found by police that their intervention was unnecessary. However, the landlord felt that there was an unreasonable disturbance again caused by the tenant's conduct. The landlord also talked to the police.

The tenant acknowledged that she was having an argument with her friend, but emphasized that, regardless of what was presumed by those listening, there was absolutely not domestic violence occurring and no charges were laid nor were any fines for noise imposed.

On December 7 2009 adjacent residents complained of loud music, arguing and swearing in the unit. The building manager testified that he again talked to the tenant about disturbing others in the complex. The landlord's position is that the tenant has been repeatedly warned not to bother others in the complex with noise and each time is contrite and makes a commitment not to repeat the conduct. The landlord stated that there has been a lot of patience and good will on the part of the landlord for a long period of time because the tenant is otherwise a likable and well-intentioned tenant. However, it has become evident that the tenant's behaviour is not going to change and appears to be getting worse in regards to the noise and some other issues of concern relating to smoking and security.

The tenant testified that she has taken drastic measures to make sure that others in the complex are never disturbed including limiting her guests to certain hours, keeping voices low, shutting the windows and playing music at a low volume. The tenant pointed out that her voice is naturally loud and that, due to her friend's hearing impediment, she has to speak at a louder than normal volume. The tenant testified that the landlord's action was prompted continual complaints from another resident who is persecuting her. The tenant testified that she is a long-term resident in the complex who is intent on complying with the Act and tenancy agreement and hopes that the landlord will consider her commitment not

to breach any rules in future. The tenant is seeking an order to cancel the One-Month Notice to End Tenancy for Cause.

The landlord stated that the Notice was not based merely on complaints from one other resident, but on the landlord's own assessment of the chronic problem of disturbances created by the tenant which the landlord believes will continue if the tenancy is preserved. The landlord is seeking an order of possession based on the Notice.

Analysis – Notice to End Tenancy

It is necessary to establish whether or not the Tenant violated the Act by engaging in conduct that significantly interfered with or unreasonably disturbed others, of a magnitude sufficient to warrant ending the tenancy under section 47of the Act.

The Guideline gives examples of what may constitute "significant Interference" including serious examples of:

-unreasonable and ongoing noise;
- persecution and intimidation;
- engaging in destructive or violent behaviour

In regards to the term, "unreasonably disturbed", Black's Law Dictionary defines "unreasonable" as:

> "Irrational; foolish; unwise; absurd; preposterous; senseless;… immoderate; exorbitant; …capricious; arbitrary; confiscatory."

In this instance I find that the tenant had, by her own testimony, repeatedly engaged in arguments with her friend and it was established that these occurred after normal daylight hours. I find that the conduct that the tenant believes to be unavoidable or within her right to pursue, clearly functions to disturb other residents and the landlord. I find that the landlord received numerous complaints over a long period of time and brought these each to the tenant's attention and even went so far as to issue a One-Month Notice for Cause in the past, which

should have had the effect of illustrating to the tenant that the excessive noise would not be tolerated and that if it did her tenancy would be in jeopardy.

I find that, despite the warnings and the clear indication that if the tenant refused to stop bothering others, the tenancy would be ended, the tenant still persisted in engaging in the offensive conduct after the warnings.

Given the above, I find that the Tenant's Application requesting that the Notice be cancelled is not supported under the Act by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession effective in two months. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

Based on the above, I hereby order that the tenancy will end pursuant to One-Month Notice to End Tenancy for Cause effective at 1:00 p.m. on Friday, April 30, 2010.

February 2010 _____

Date of Decision

Dispute Resolution Officer