



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated August 10, 2010.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on October 1, 2009. On August 10, 2010, the Landlord said she served the Tenant in person and by registered mail with a One Month Notice to End Tenancy for Cause dated August 10, 2010. The Landlord relies on the following grounds for issuing the Notice:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk; and

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord admitted that she had included the last ground of the Notice in error and that she was not alleging that the Tenant had engaged in an illegal activity. The Landlord said however, that there had been a number of complaints from other occupants of the rental property about the Tenant disturbing them with loud parties, playing loud music and so forth. In particular, the Landlord said the first complaint she received about the Tenant was on December 11, 2009 from the tenants who reside in the suite below the rental unit. The Landlord said these tenants contacted her at 11:00 pm to advise her that there was shouting and loud music coming from the Tenant's suite and that her guests were throwing cigarettes butts onto their balcony. The Landlord

Residential Tenancy Branch
Ministry of Housing and Social Development

said she sent the Tenant a letter advising her about the complaint and about the Landlord's noise policy.

The Landlord said she received a second complaint on January 22, 2010 from the tenants who reside in the suite below the rental unit about noise coming from the Tenant's unit from 11:00 pm to 3:30 a.m. As a result of this incident, the Landlord said the Tenant was sent a warning letter. The Landlord said she received a third complaint from the same tenants that on February 19, 2010, the Tenant and her guests were yelling and thumping on her balcony and that the noise caused their disabled child to have seizures for which the child had to be taken to the hospital. The Landlord said she believed she would have advised the Tenant about this complaint but did not document it in writing.

The Landlord said that she received a fourth complaint about the Tenant having a continuous party from June 8 – 10, 2010. In particular, the Landlord said three different tenants complained to her about loud music and voices, strangers buzzing them to gain entry to the building and drunken guests in the courtyard who would not leave. The Landlord said the Tenant's guests also threw lit cigarette butts onto the balcony below the rental unit putting a burn hole in a mat near a propane tank and also broke a shot glass. As a result of this incident, the Landlord said the Tenant was served with a One Month Notice to End Tenancy for Cause on or about June 9, 2010. The Landlord said the Tenant later apologized for her actions and agreed that if the Landlord withdrew the Notice, she would ensure there were no more loud parties or loud music. Consequently, the Landlord said this notice was cancelled.

The Landlord said, she received more verbal complaints about the Tenant making noise after this time but she did not document them as it was her practice to only document complaints made in writing. The Landlord also said that when she was not on the rental property in the evenings, it was her practice to tell tenants to contact the police about disturbances. In any event, the Landlord said she received a complaint from the occupant of the suite beside the Tenant on or about August 3, 2010 who advised her that the Tenant had been playing loud music the previous evening which woke up her child. This occupant claimed that when she approached the tenant to ask her to turn down the music, an argument broke out with the Tenant. The Landlord said that as a result of this complaint, she served the Tenant with a One Month Notice to End Tenancy because she felt the Tenant had not followed through with her promise. The Landlord admitted that she did not discuss this complaint with the Tenant first.

The Tenant said she did not recall been notified by the Landlord about complaints on January 22nd or February 19, 2010. The Tenant admitted that there was an unreasonable amount of noise due to the party held from June 8 – 10, 2010. The Tenant said that when she received the One Month Notice from the Landlord as a result

Residential Tenancy Branch
Ministry of Housing and Social Development

of this incident, she felt bad. The Tenant said she spoke with the Landlord to advise her about some personal issues she was having at the time and asked the Landlord for a second chance.

The Tenant said she gave her telephone number to the occupants of the unit below her and beside and asked them to call her if she was making too much noise. The Tenant said she also got rid of a stereo (or subwoofer) and a large television that were causing loud vibrations. The Tenant said that on August 2nd, she was playing cards with three friends and was playing music at a normal level. The Tenant said the occupant of the unit beside her came to her door, accused her of being irresponsible and threatened to call the police and have her thrown out on the street.

The Tenant argued that the construction of the rental property was such that one could hear the occupants in the next suite yelling, running up and down stairs and banging doors. The Tenant's witness (A.T.) gave evidence that she was a frequent guest at the rental unit from mid-June until August 2010 and that during that time the Tenant's music was not played loudly. The Tenant's witness also recalled that on one occasion she could hear yelling from another suite. In summary, the Tenant argued that since the previous Notice was withdrawn, she had not made an unreasonable amount of noise and that any noise heard by other tenants in adjoining suites was simply due to the sound of normal activities being amplified.

The Landlord admitted that tenants would be able to hear each other through adjoining walls but argued that the occupants would have to be loud. The Landlord claimed that other tenants had advised her that the Tenant did not answer her telephone when they called her about noise and suggested that was because she could not hear the telephone due to the noise. The Landlord also admitted, however, that the tenant who lives across from the Tenant said they could *not* hear noise coming from the Tenant's suite.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord argued that she only agreed to withdraw a previous Notice to End Tenancy provided that the Tenant agreed not to play loud music, have loud parties or unreasonably disturb other occupants of the rental property. The Landlord claimed that

Residential Tenancy Branch
Ministry of Housing and Social Development

on August 2, 2010, the Tenant breached this agreement by having a loud party that lasted late into the night and that disturbed her next door neighbor. The Tenant denied that she had breached her agreement with the Landlord or that she was having a loud party on August 2, 2010. Instead the Tenant claimed that she was playing cards with 3 friends and that the music was at a “normal level.” The Tenant denied that the get-together lasted until 3:00 am as the Landlord claimed. The Landlord admitted that the other tenant’s written statement did not say this but she argued that that was what she had been told. However, the Landlord’s own written account of her conversation with the other tenant does not say this either. Consequently, I find that what the other tenant complained of (as indicated in her statement) was that she was awoken early the following morning by someone ringing her intercom and asking for the Tenant.

The Tenant also argued that she had not made an unreasonable amount of noise given the way noise travelled in the rental property but instead had taken steps to reduce noise by removing a subwoofer and large television. The Landlord admitted that certain noises could be heard between suites and also that a neighbor across from the rental unit could not hear any noise coming from the Tenant’s suite. Having regard to all of this evidence, I cannot conclude that the Tenant breached her agreement with the Landlord.

The Landlord’s noise policy (as set out in her letter to the Tenant of February 1, 2010) is that “quiet time” is between 10:00 pm and 7:00 am and during that time there is to be no loud music, etc. The evidence suggests that there was no noise coming from the Tenant’s suite after 10:00 p.m. on August 2, 2010. In particular, the Tenant denied it and the complainant made no such allegation. The allegation was that the noise from the rental unit at 10:00 p.m. disturbed the other occupant which both the Tenant and the occupant who resides across from her denied. Consequently, I conclude that any noise problem on the evening of August 2, 2010 had more to do with the poor sound proofing in the wall adjoining the 2 suites than from an act of the Tenant. In other words, I find that there is insufficient evidence that the Tenant’s conduct on this day was in breach of the agreement she made with the Landlord on June 15, 2010.

In summary then, the Landlord agreed to forgive the Tenant for incidences that occurred prior to June 15, 2010 provided that there were no further incidences of a similar nature. The Landlord claims that there were further incidences which include one on August 2, 2010. However, there is no evidence of any verbal complaints between June 13 and August 1, 2010 and any incidences *after* August 10, 2010 are irrelevant because they would not have been a reason for the Landlord serving the Notice. Furthermore, I find that there is insufficient evidence that the Tenant had a loud party or played her music unreasonably loud on August 2, 2010. The Landlord admitted that she did not investigate this complaint until sometime later when she discovered that another neighbor had not heard noise from the Tenant’s suite. Consequently, I find that the



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the One Month Notice to End Tenancy for Cause dated August 10, 2010 is cancelled and the tenancy will continue.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated August 10, 2010 is cancelled and the tenancy will continue. 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: September 23, 2010.

Dispute Resolution Officer