



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC

Introduction

This hearing dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause issued September 8, 2010.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

- Should the Notice to End Tenancy (the “Notice”) be cancelled?

Background and Evidence

A copy of the tenancy agreement was entered in evidence. The tenancy agreement was signed by the parties on September 29, 2003. The tenancy started on October 14, 2003. The rental unit is a one bedroom apartment in a rental property that houses people over the age of 45 years, many of whom have disabilities or illnesses. The Landlord is a non-profit housing society.

The Landlord served the Tenant with the Notice by posting it on the Tenant’s door on September 9, 2010.

The Landlord's agent gave the following testimony and documentary evidence:

In February, 2010, the Landlord began receiving complaints from a neighbour of the Tenant's with respect to loud music coming from the Tenant's home. Most of these incidents occurred in the late night/early morning hours.

Starting April 8, 2010, the Landlord's agent summarized the dates and nature of the complaints, along with the steps the Landlord took as a result of the complaints, as follows:

Date	Nature of complaint	Action taken by Landlord
7:00 p.m., Apr 8	Landlord's agent hears loud music coming from Tenant's suite	Tenant advised to turn music down. Tenant complies.
3:30 a.m., Apr 10	Tenant's neighbour writes report about loud music coming from Tenant's suite	
3:30 a.m., Apr 13	Tenant's neighbour awoken by loud music and pounding bass	Written notice given to Tenant on Apr 15, advising Tenant of breach of tenancy agreement and the Act. Landlord meets with Tenant Apr 19.
1:40 a.m., Apr 20	Tenant's neighbour disturbed by heavy bass sounds from Tenant's suite	Written notice given to Tenant on Apr 22, advising Tenant of breach of tenancy agreement and the Act. Tenant warned a Notice to En Tenancy could issue. Landlord meets with Tenant Apr 23.
Aug 7	Landlord received written complaint from Tenant's neighbour regarding loud music from 12:30 a.m. to 5:00 a.m.	
Aug 9	Landlord received written complaint from Tenant's neighbour regarding loud music from 1:30 a.m. to 3:30 a.m., together with other late night noises between July and August.	Police called and attended. Aug 10, third written warning issued to Tenant advising his tenancy is under review. Landlord meets with Tenant on Aug 11.

Aug 19	Landlord received written complaint from Tenant's neighbour re: loud music at 3:35 a.m.	Aug 23, Landlord issues 4 th breach letter. Landlord meets with Tenant on Aug 25.
Sep 7	Landlord has meeting with Tenant in morning. At 11:35 p.m. loud music coming from Tenant's suite until 1:30 a.m.	Police called. Notice to end Tenancy issued Sep 8.

The Landlord's agent testified that after the Tenant was served with the Notice, there were further incidents of the Tenant playing music so loud that it woke his neighbour: between 11:22 and 11:45 September 24; between 11:10 p.m., September 28 and 00:25 a.m., September 29; between 11:10 p.m. and 11:40 p.m. October 4; and between 2:25 a.m. and 3:35 a.m., October 8, 2010.

The Landlord's witness gave the following affirmed testimony:

The witness is the Tenant's neighbour and the person who has complained about the excessive noise.

The witness testified that the noise problems began in February, 2010, after the Tenant purchased a subwoofer for his stereo system. The witness testified that the bass noises were so loud that he could not bear to stay in his room. He stated that he spoke with the Tenant and asked him to be mindful of the disruption, and the Tenant stated that he liked to play his music loudly and had a right to play his music in his own home. The witness stated that he invited the Tenant to come to the witness's suite to hear how loud the music was. For a short time there was respite.

The witness stated that the noise started again and that he had approximately 6 conversations with the Tenant about the noise. Finally, on April 8, 2010, he filed his first written complaint with the Landlord.

The witness stated that he had called the police three times as a result of the noise, and that it was a poor use of the police's resources. The witness stated that the Tenant

suggested that he pound on the wall if he was disturbed again. The witness stated he shouldn't have to pound on the wall and that no one should be driven from their bed repeatedly because of a neighbour's noise.

The Tenant gave the following testimony:

The Tenant stated that the witness and he used to be good friends. He stated that he told the witness to knock on his door if the Tenant's music was disturbing him.

The Tenant testified that he disconnected his subwoofer after the first complaint in February, 2010. He stated that he has lived in the rental unit for 7 years, has always played his music at the same level and didn't have any complaints until February, 2010. He suggested that the doors were not soundproof.

The Tenant stated that noise was a subjective thing.

The Tenant stated that he was ill for a period of three years, from the fall of 2005 until August, 2009, during which time there was little noise coming from his room. He stated he began feeling better by December, 2009, and started playing his music again.

The Tenant suggested that he be allowed to stay for a probationary period, and that perhaps an objective level of noise could be established so he would know when noise from his stereo penetrated the witness's room.

The Landlord's agent gave the following reply:

The Landlord stated that this suggestion had been made by the Tenant before, and that nothing had changed. The Landlord stated that the Tenant never made a firm commitment to lower the volume on his stereo and said he would "try".

The Landlord asked for an Order of Possession effective October 31, 2010.

Analysis

The Notice alleges that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, the right to freedom from unreasonable disturbance. I find that the witness was unreasonably disturbed in the middle of the night on a number of occasions. I find that the Tenant was advised, verbally and in writing of the disturbances, and did not correct the problem.

A Landlord has a responsibility to his tenants to provide freedom from unreasonable disturbance. The Landlord may be found financially liable if the Landlord does not take steps to ensure that the tenants in his building are provided with peaceful enjoyment of their homes.

Based on the testimony and written documentation provided, I find that the Tenant has unreasonably disturbed the witness, a tenant in the rental unit, and I dismiss the Tenant's application to cancel the Notice.

I find that the effective date for the end of the tenancy is October 31, 2010. The Landlord asked for an Order of Possession. Pursuant to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., October 31, 2010.**

Conclusion

The Tenant's application is dismissed.

I grant the Landlord an Order of Possession **effective 1:00 p.m., October 31, 2010.** This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 22, 2010.

CORRECTED: October 25, 2010
