



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, the landlord's agent and a witness for the landlord.

Due to a Residential Tenancy Branch administrative error at the time of the hearing I did not have access to the landlord's evidence and I allowed the landlord to re-submit all his evidence via facsimile. In addition, I order that both parties could provide, via facsimile, copies of the 1 Month Notice to End Tenancy.

The landlord's agent verbally requested an order of possession should the tenant not be successful in his application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be determined if the landlord is entitled to an order of possession in accordance with Section 55 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on November 1, 2010 as a 1 year fixed term tenancy for a monthly rent of \$2,100.00 due on the 1st of each month and that a security deposit of \$1,050.00 was paid on November 1, 2010.

The landlord issued a 1 Month Notice to End Tenancy for Cause on February 25, 2011 with an effective date of March 31, 2011 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the 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's agent testified that he had received various noise complaints throughout the duration of the tenancy from a neighbouring tenant regarding music and loud parties beginning on November 11, 2010 and continuing through December 2010 and January and February of 2011.

The landlord submitted into evidence a summary of events provided by the neighbour complaining about the noise issues. The summary includes several emails between unknown parties as the complainant has removed the salutations and email addresses off of all of the email correspondence.

The landlord also asserts the tenant has placed a propane tank in the hallway just outside of his rental unit and placed a satellite dish on the roof contrary to the strata bylaws.

The tenant contends that the building itself is of such construction that ambient noise travels through units all the time and even during this hearing he could hear someone next door walking around in high heels. The tenant also contends that no one else has made any complaints regarding any noise.

The tenant has submitted into evidence a typewritten and unsigned note attributed to the residents on the other side of his unit stating that they at no time have heard noise at levels that were audible or disturbing the peace on the dates of February 19 and 22 of 2011.

The landlord's evidence provided by the complainant neighbour has a note that is attributed to a person by the same name as that attributed to the author of the tenant's note. In this note provided by the landlord it is identified as a note that this neighbour sent to the strata council, however no email addresses are shown or confirmed as being sent to the council.

The tenant testified that although he had had discussions with the landlord's agent regarding noise issues he states he was never once informed that his tenancy was in jeopardy and specifically that he never received any written warnings or otherwise to that effect. The landlord provided no copies of written warnings to the tenant.

The landlord also submitted copies of letters from the strata council fining the owner of the rental unit for tenant causing noise on 3 occasions and for installing a satellite dish on the roof. No testimony or evidence was provided on how the strata council investigated or determined the validity of the complaints.

Analysis

Section 47 allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the 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

While substantial testimony was provided regarding a propane tank and barbecue and the installation of a satellite dish on the roof, I find these issues are unrelated to the reasons cited by the landlord as cause to end this tenancy.

While I accept that the complainant neighbour has filed several reports to both the owner of this rental unit and to the strata council, I note the landlord has no corroborating evidence provided by other parties and/or neighbours.

I recognize both parties have submitted documents attributed to the neighbour on the other side of the tenant, neither party has provided evidence to substantiate the validity as documents attributed to that party.

In ending a tenancy for cause, the burden of proof rests with the landlord to establish that the cause exists and is substantial enough to that the tenant should lose their home. In this case one party, the complainant neighbour, has asserted another party, the tenant, has disturbed them sufficiently that the tenant should lose his home.

I find it improbable that if the noise generated by this tenant was so excruciating that additional neighbours and in particular those on the opposite side of this tenant would not have made an equally voluminous number of complaints to the landlord or strata.

In addition, as the landlord pointed out there is a noise bylaw in this jurisdiction and yet neither party noted any complaints or investigations that were conducted by local police or bylaw enforcement personnel as a result of municipal bylaw infractions.

Despite the fines imposed by the strata, in the absence of evidence or testimony as to how the strata investigated the complaints, I find their rulings cannot be relied upon to substantiate the one neighbour's complaints.

And finally, I accept the tenant's position in combination with the absence of any documented written warnings from the landlord that the landlord failed to provide adequate warnings of the consequences of any noise disturbances.

Conclusion

As per the above, I find the landlord has failed to establish sufficient cause to end the tenancy and I order the 1 Month Notice to End Tenancy for Cause issued on February 25, 2011 to be cancelled. I find the tenancy to be in full force and effect.

Further, as I have cancelled the Notice to End Tenancy, I dismiss the landlord's request for an order of possession.

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: March 25, 2011.

Residential Tenancy Branch