



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated March 29, 2011 and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Landlord admitted that she had not served the Tenant with any of her documentary evidence that she submitted to the Residential Tenancy Branch. As the Tenant has had no opportunity to respond to this evidence, I find that it should be excluded pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

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

Background and Evidence

This tenancy started in March 2009. The rental property consists of 3 suites, one on an upper floor and 2 on a lower floor. The Tenant occupies one of the suites on the lower floor. On March 30, 2011, the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated March 29, 2011. The ground stated on the Notice was the "Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord."

The Landlord said that there were two property managers for the rental property in 2009; one worked for a period of six months and she was replaced by another who worked for a period of 3 months. The Landlord claimed that she was advised by both of these property managers that they quit because they could not deal with the Tenant. The Tenant denied this and claimed that one of the property managers left to return to school and the other was fired by the Landlord.

The Landlord also claimed that other tenants have moved out because they could not deal with the Tenant. The Tenant denied this and claimed that she had a good relationship with former tenants and that they moved out instead because the Landlord failed or refused to deal with other tenants who were then residing in the upper suite and making an unreasonable amount of noise. The Tenant provided a witness statement from the former occupants of the suite next to her who claimed they moved out because the Landlord failed to deal with their complaints about noise from the upstairs occupants. The Tenant also claimed that since she has resided in the rental property, the first set of former occupants of the upper suite were evicted for non-payment of rent and the following occupants were evicted for disturbing herself and the other occupants of the suite next to her.

The Landlord also claimed that when she took over managing the rental property in March of 2010, the Tenant constantly complained to her about other occupants of the rental property and she received many complaints from other occupants who were upset about the Tenant's behaviour.

The Landlord's witness, E.B., gave evidence that she resides in the suite above the Tenant. This witness claimed that when she first moved in, she had an argument with the Tenant over the use of the laundry facilities and the Tenant was verbally abusive and threatening. E.B. also claimed that on one occasion, she could hear the Tenant through the laundry room door say that she would call the Landlord if she turned on the dryer. E.B. said that the Tenant knocked on her door 2 days after she moved in and asked her to turn down her television because she claimed it was too loud. E.B. said on another occasion, the Tenant showed up at her door and told her that she had gotten another tenant evicted for making too much noise. E.B. further claimed that the Tenant has complained to the Landlord about it being too hot or too cold in her suite and demanded that she turn up the heat or turn down the air conditioning. E.B. also claimed that the Tenant banged on her door approximately 2 weeks ago and started yelling about noise when her children were home alone.

The Tenant admitted that she had an argument with E.B. about leaving her clothes for an entire day in the laundry machine but claimed that E.B. was upset with her because she mistakenly believed the Tenant had thrown her clothes on the floor. The Tenant also admitted that she approached E.B. and asked her to turn down her television but denied that she was rude.

The Landlord's witnesses, S.G. and M.G., said they have resided in the suite next to the Tenant for approximately a year and share a common wall. These witnesses claim that the day they moved in the Tenant banged on their door and demanded that they turn their stereo down. S. G. And M.G. said they advised the Tenant that they had not yet unpacked their stereo and she went away mumbling that it must be the tenant upstairs. S.G. and M.G. also claimed that the Tenant has come to their suite several times in the middle of the day threatening to call the police when one of them was playing a guitar. On one occasion, S.G. said the Tenant acted threateningly to a guest who mistakenly

parked in the Tenant's space. On another occasion, S.G. said the Tenant shouted at his much younger sister to be quiet when she was playing outside. M.G. and S.G. also claimed that they often can hear the Tenant through the common wall swearing and complaining about other tenants and the Landlord. They said this is not healthy for their or other children they care for to overhear.

S.G. and M.G. said they finally asked the Landlord to do something about the Tenant's aggressive behaviour and she told the Tenant not to confront them again. S.G. and M.G. claim that the Tenant has not approached them since this time but now yells through the wall "go ahead and call the landlord" or turns up her music when she is upset with them. M.G. and S.G. said this has become stressful for them and they are now reluctant to watch movies without headphones or to play music.

The Tenant claimed that S.G. and M.G. make an unreasonable amount of noise and that at times she can hear the bass from their stereo bouncing off the common wall. The Tenant said she has also heard S.G. yelling at her through the wall to shut up when she is talking on the telephone. The Tenant denied talking to S.G. and M.G.'s friends or relatives but admitted to asking one of their friends to move her car from her parking spot. The Tenant said she get along with occupants of the neighbouring rental property where her mother resides and she provided witness statements from them.

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 claimed that the Tenant has disturbed her previous property managers and herself with her complaints about other occupants making noise. The Landlord also claimed that other occupants of the rental property have complained about the Tenant confronting them about making noise and about the noise she makes. The Tenant claimed that she has legitimate complaints about unreasonable noise in the rental property but the Landlord does not want to deal with it. Both Parties admitted that part of the problem is a lack of soundproofing in this rental property. The Tenant provided witness statements from other occupants who also claimed that they could hear everything from neighboring suites, from ringing telephones to flushing toilets and doors closing. The Landlord also admitted this but claimed there was nothing she could do.

Given the evidence of the former and current occupants of the rental property, I conclude that the main problem is a lack of sound proofing which has resulted in all the occupants' being disturbed to some degree. In the circumstances, I find that while the Tenant may not be as diplomatic as she could be in expressing her concerns to her neighbors about these noise disturbances, I find that this is not a sufficient reason to

end her tenancy ***at this time***. However, the Tenant is now on notice that should she exhibit aggressive behavior from this point forward such as yelling and swearing at the other occupants (for example), her tenancy may be ended for that reason. In other words, while the lack of soundproofing may disturb the Tenant's right to quiet enjoyment, it is not an excuse to be abusive to others living in the rental property.

As the Tenant has been successful in this matter, I find that she is entitled to recover the \$50.00 filing fee for this proceeding and I order pursuant to s. 72(2) of the Act that she may deduct that amount from her next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated March 29, 2011 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: April 21, 2011.

Residential Tenancy Branch