



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord comply with the Act. Both parties participated in the conference call hearing.

Issue to be Decided

Should the notice to end tenancy be set aside?
Should the landlord be ordered to comply with the Act?

Background and Evidence

On or about March 21, 2011, the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that 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 and that she 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 rental unit is located on the upper floor of a residence in which the landlords occupy the ground level.

The landlords testified that since the tenant moved into the unit in 2004, she has made approximately 75 complaints, approximately half of which were unfounded, and stated that they are tired of what they find to be constant complaining. The landlords that some of tenant's complaints were about:

- The landlord of peering in her window;
- The location of the mailbox;
- Cigarette smoke;
- A shortage of hot water;

- A washing machine not draining properly;
- A refrigerator not working properly;
- Maintenance in the front yard;
- Not being telephoned when the landlord was painting;
- A lack of heat
- Moving patio chairs; and
- The location of wind chimes

The landlords provided copies of emails in which the tenant made her complaints or requests.

The landlords acknowledged that the tenant has not engaged in illegal activity.

The landlords also alleged that the stress from the tenant's complaints were negatively affecting the health of the male landlord, who had a heart attack and heart surgery in 2008. The landlords were particularly disturbed on March 15, 2011 when the tenant telephoned them at 2:40 a.m. and then a short time later knocked on their door to complain about noise from wind chimes.

The tenant denied that her complaints were unfounded and gave evidence that on the morning following the incident in which she complained about wind chimes, the landlord telephoned her at 1:56 a.m. to advise that the wind chimes had been taken down.

The tenant asked that the landlords be ordered to remove or at least move the offending wind chimes to a more sheltered location where they won't disturb her sleep. The tenant claimed that although the wind chimes were in place prior to her tenancy and she did not disturb her for the first 6 hours of her tenancy, her sleep was disturbed when the chimes were moved to an unsheltered area near her bedroom window. The tenant claimed that during windy periods, the chimes would ring so loudly she was unable to sleep. The tenant acknowledged that the landlords had moved the chimes yet again, but that they still bothered her.

The landlords claimed that the chimes are now back in the location in which they were for approximately 20 years and claimed that the tenant should not be bothered by them.

Analysis

The landlords bear the burden of proving that there are grounds to end the tenancy. The landlords provided me with copies of communications between the parties which included the complaints which the landlords feel are excessive. Some of the emails make requests for repairs and for the most part, the tone of the emails is extremely

courteous. The tenant made requests for accommodations which she believed would make her life easier, such as a request in 2004 that the landlords permit her to have her own mailbox, and appears not to have pursued the issue beyond that one request. The tenant sent an email on March 2, 2008 advising that there was no heat and on March 6 the landlords responded by saying that repairs had been effected and inviting the tenant to contact them should she experience further difficulties.

I am unable to find anything in anything in these communications that can be characterized as unreasonable. The tenant has an obligation to inform the landlord when repairs are or may be required and it seems reasonable that she make requests which she feels may make her stay more enjoyable. The tenant's suggestions that the landlords had moved her furniture and removed her plantings from the garden also strike me as reasonable, as it was unlikely that a third party would trespass on the property for that purpose. The tenant does not appear to have pursued those accusations or harassed the landlords about the issue.

While the male landlord may have experienced some health problems as a result of his dealings with the tenant, I find that it was more likely because he wishes to have absolutely no communication with her, which is not possible as long as he acts as her landlord.

I find that the landlords have failed to prove that the tenant has significantly interfered with or unreasonably disturbed the landlord, seriously jeopardized the health or safety or lawful right of the landlord or has engaged in any illegal activity. Accordingly I order that the Notice be set aside and of no force or effect. As a result, the tenancy will continue.

As for the tenant's request that the landlords move the wind chimes, it is clear that the parties bear some hostility toward each other and are using the wind chimes as a weapon. The landlords briefly complied with the tenant's request that the chimes be taken down at night, but when they became increasingly irritated with her, they left the chimes up despite knowing that they annoyed her. I believe that the landlords wished to retaliate against the tenant as is demonstrated by the pointless telephone call in the early morning hours of March 16 when they woke her to advise her that the chimes had been taken down. This bizarre and unprofessional behaviour succeeded in aggravating the tenant to the point where she also felt the need to retaliate. The tenant had not been bothered by the chimes for more than 6 years when they were away from her bedroom window and was understandably bothered when they were moved to a closer location. I am led to believe that the only reason she is now bothered by them when the landlords have moved the chimes back to their original position is because the tenant

has become increasingly irritated with the landlords and is unwilling to tolerate even the most mild disturbance.

The tenant is entitled to quiet enjoyment of the rental unit and claims that on windy nights the chimes prevent her from sleeping. I find on the balance of probabilities that this is the case. Because the wind chimes are ornamental and there is no evidence that they are necessary for the landlords' reasonable use of their own property, I find it prudent to err on the side of caution. I order the landlords to either entirely remove the chimes or move them to a more sheltered location in which they will not bother the tenant. The landlords should take this action immediately upon receipt of this decision. I note that the tenant had suggested that they be moved to the landlords' deck where they will be more sheltered from the wind. I advise the landlords and tenant to engage in a civil dialogue about the wind chimes and make every attempt to find a location for them in which the landlords may enjoy them and the tenant not be unreasonably disturbed. I further note that the tenant should exercise some degree of tolerance and should not demand that the chimes make absolutely no noise, but simply that they not make an unreasonable amount of noise.

Conclusion

The Notice is set aside. The landlords are ordered to either move or remove the wind chimes as outlined above.

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 13, 2011

Residential Tenancy Branch