



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNR, MNDC, OLC, ERP, RP, FF

Introduction

This hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice); for a Monetary Order for the cost of emergency repairs and compensation for damage or loss under the Act, regulation or tenancy agreement; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order that the Landlord make repairs to the rental unit; and recovery of the filing fee.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the monetary claims and requests for Orders that the Landlord make repairs to the rental unit and comply with the Act, regulation or tenancy agreement are not sufficiently related to the main

issue, which is to cancel the Notice. For these reasons, I dismiss the Tenant's application for a Monetary Order and other Orders **with leave to reapply**.

Issue to be Decided

Should the Notice issued June 5, 2011, be cancelled?

Background and Evidence

This tenancy began on April 1, 2011. There is no written tenancy agreement. On June 5, 2011, the Landlord posted the Notice to the Tenant's door.

The Landlord has alleged the following reasons on the Notice for ending the tenancy:

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

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;

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

- Adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord;
- Jeopardize a lawful right or interest of another occupant or the landlord.

(emphasis added)

The Landlord submitted that she is not alleging that the Tenant has engaged in any illegal activity.

The Landlord testified that the Tenant is harassing other tenants in the rental property. Letters from the other tenants were provided in evidence.

The Landlord's witness PW lives in suite 113 of the rental property, which is one floor below the Tenant's suite. She testified that the Tenant will not allow her and her neighbours in suite 111 to have private conversations on their decks without calling out to them and saying that they are too loud. She stated that they are not too loud and are only having conversations in normal speaking volume. The witness testified that the

Tenant called the police complaining that the witness's dog was barking too much. The witness denied that the dog was barking any more than a normal dog barks and that the rental property is a dog-friendly building. The witness stated that she began muzzling the dog and taking her to work with her, leaving her in the car. The dog developed behavioural problems and as a result was put down.

The Landlord's witness HC lives in suite 111, directly below the Tenant's suite. She testified that everything was peaceful until the Tenant moved into the building and began to make frivolous complaints about noise. The witness denied that her dogs barked excessively and stated that it was a pet-friendly building. The witness stated that she used to work with the Tenant and she believes the Tenant is vindictive because of their past work relationship which was not good. The witness stated that she is sick and tired of feeling she can't live normally in her own home and that the Tenant stomps on the floor (the witness's ceiling) all the time. The witness stated that the Tenant has been slandering her, saying that she swore at the Tenant, and that none of it was true. The witness stated that no one, including any dogs, was home on one of the incidents when the Tenant called the police about noisy dogs and that the barking may have been coming from a dog across the street.

The Landlord's witness JW lives in suite 111. She testified that she doesn't enjoy living in her home since the Tenant moved into the building because of her constant complaining about normal everyday noises. She believes it is the Tenant complaining because she was told that "someone" is complaining and has tried to speak to everyone in the building to work it out. She stated that she has talked to everyone except the Tenant, who is rude and will not respond to her. The witness stated that she is looking for another place to live because of the stress caused by the Tenant. She stated that she now takes her dog everywhere because she is afraid of being evicted.

The Tenant submitted that the allegations on the Notice are false and that she believes the Landlord issued the Notice in retaliation for the Tenant filing an application against the Landlord in April, 2011. The Hearing was conducted in May, 2011, and the Tenant

was successful in her application for Orders that the Landlord make repairs to the rental unit. The Tenant submitted that the Landlord and the other tenants work together and are friends and that they are attempting to get rid of her because they don't like her. The Tenant submitted that it is the other tenants who are harassing her by allowing their dogs to bark and that she had to call the police because of a loud party the other tenants had on May 30, 2011.

The Tenant stated that she has never received a verbal or written warning about any alleged harassment of other tenants. She stated that the Landlord wants her to move out of the building and has told her that she would help her to move. The Tenant stated that the witness PW doesn't even know her and cannot say for certain that she was the person telling PW and her neighbours to be quiet.

Analysis

This Hearing was challenged by the degree of animosity between the parties. It is very clear that this is an unhappy tenancy for both parties. The tenancy is less than 3 months old and there have already been two Dispute Resolution Hearings.

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

I find that the Landlord has not provided sufficient evidence that the Tenant is engaging in **illegal** activity and this reason for ending the tenancy is therefore unproven.

The Landlord has not provided sufficient evidence that the Tenant has significantly interfered with or unreasonably disturbed the Landlord. The Tenant denies stomping on her floor, or calling out to the other tenants to stop talking, and I find that the Landlord has not provided sufficient evidence that the Tenant has significantly interfered with or unreasonably disturbed the other tenants.

It is evident that the parties do not like each other, but that is not a reason to end a tenancy. The Tenant was aware when she moved into the rental unit that she was moving into a pet friendly building. Dogs bark. While excessive barking, or barking in the middle of the night, is not acceptable, it is only normal to expect dogs to greet their owners or each other with a bark.

The Landlord has failed to provide sufficient cause to end this tenancy and I grant the Tenant's application to cancel the Notice. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in her application and is entitled to recover the filing fee of \$50.00 from the Landlord. The Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Tenant's application for a Monetary Order and other Orders is dismissed **with leave to reapply**.

The Notice to End Tenancy issued June 5, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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: June 24, 2011.

Residential Tenancy Branch