



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on May 17, 2011. The landlord was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both Parties agree that this month to month tenancy started on March 07, 2010. Rent for this unit is \$1,200.00 per month and is due on the first day of each month in advance.

The landlord testifies that he was notified by the Strata Council of the building in which the tenant resides that the tenant has disturbed other tenants living in the building. The landlord states he has received letters from the Strata Council on August 27, 2010, December 13, 2010, February 16, 2011 and May 05, 2011 concerning contraventions of the Strata Bylaws by the tenant and has had fines imposed on his account.

The landlord testifies that due to pressure from the Strata Council, other tenants and the management he has served the tenant with a One Month Notice to End Tenancy on May 10, 2011. This Notice has an effective date to end the tenancy as of June 10, 2011 and gave the following three reasons to end the tenancy:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,

The landlord testifies that he has received complaints about the tenants' behaviour when the tenants living in the unit beneath his came to complain about noise. The landlord states he was told there was an exchange of words and since then the female tenant living in that unit has said she is scared living in the unit by herself. The landlord has provided letters from the Strata Council concerning the alleged violations and fines

and a letter from the tenants residing in the unit beneath the tenants which details the tenant shouting obscenities, yelling and stomping around his unit, getting drunk and going onto his balcony and yelling and swearing at 3.00 a.m. They claim to have been woken by his alarm clock going off at 5.00 a.m. This letter also details the tenant making banging noises late at night along with swearing which wakes these other tenants up.

The landlord states he has no personal knowledge of these complaints but states he seeks the Notice to be upheld as he is getting fines and is under pressure from the Strata Council to evict this tenant. The landlord states he was informed that the other tenants have called the police and states he has been told there is excessive marijuana smoke coming from the tenants' balcony.

The tenant testifies that he has never had any complaints against him until these tenants moved into the unit beneath him. He states he recalls an incident when they knocked on his door complaining about him making a lot of noise. The tenant states he does not stomp around his unit and wears slippers inside. He states he does have to get up early for work and is gone by 6.00 a.m. each day. The tenant states he asked these tenants if it was his music disturbing them and they state no just walking noise. He states a week later they came back again and complained about his music. He states on this occasion he invited the male tenant in and asked him if he thought his music was too loud. The tenant states he was getting irate about these complaints especially when this other tenant asked him if he wanted a "war". The tenant states on this occasion it was a Friday night he did not have blaring music playing but because he was irate he did decide to stomp on the floor and turn his garbrator off and on for a short while just to make a point.

The tenant states this is a building where noise does transfer between the units. He states he was perplexed when he got these complaints because his other neighbour has never complained. He states he does not yell, scream or swear from his balcony and never smokes marijuana. He states he can only recall one incident when his music was loud on a summer evening when his windows were open and as soon as he

realized he turned it down. The tenant also states he has never had a visit from the police and denies all the accusations against him

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. 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. In this matter the landlord has based his decision to end the tenancy on letters received from the Strata Council and agrees he has no firsthand knowledge of these incidents. The landlord has provided no witnesses to give sworn statements or submit to cross examination; and no one from the Strata Council or management of the building has been called to give evidence to support the reasons given on the Notice to End Tenancy.

The tenant argues that it is just the tenants living in the unit beneath his who are sensitive to everyday living noise and no other tenants living around him have complained about him. The tenant agrees he did get irate and stomped about and turned his garbrator off and on but as this occurred on only one occasion this would not warrant an eviction Notice.

Therefore In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated May 10, 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: June 13, 2011.

Residential Tenancy Branch