



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord company attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. The parties were also given the opportunity to cross examine each other on the evidence and testimony provided. All evidence and the testimony have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

Background and Evidence

This month-to-month tenancy began on April 1, 2006 and the tenant still resides in the rental unit. Rent in the amount of \$1,055.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00.

The landlord testified that 2 incidents have caused the landlord to issue a notice to end tenancy for cause. The tenant resides on the 2nd floor, in Unit #9 and had installed a washing machine that backed up into the sink of another unit (Unit #4), who complained a few times. On October 11, 2011 the landlord's agent went to Unit #4 with a City inspector and another employee of the landlord company, and all viewed the problem. Subsequently the City issued an order, a copy of which was provided prior to the commencement of this hearing. The order states that "The following deficiency was observed: 1. The washing machine and dishwasher in Unit #9 have not been installed properly and the water from these appliances is back flowing into the kitchen sink in Unit #4 – a qualified plumber is required to obtain a Plumbing Permit and correct the

plumbing deficiencies in Units #4 and #9.” The order requires the landlord to correct the deficiencies as indicated on or before October 31, 2011. The agent further testified that the tenancy agreement provides that the tenant may install the appliance, but the tenant is responsible for any damages caused by it. The landlord’s agent and the City inspector told the tenant not to use the washer due to the problems in unit #4. However, the tenant in unit #4 complained to the landlord that the tenant ran it repeatedly. When asked if the landlord’s agent had been in the suite to see the washer, the agent responded that he had not.

The landlord’s agent further testified that on October 31, 2011 the tenant had decorated for Hallowe’en, and the decorations obstructed the access to the entrance of Unit #4. When the tenant in Unit #4 asked the tenant applicant to move the decorations, the tenant applicant started to jump on the floor. The landlord’s agent stated that the tenant applicant is a big guy, and the jumping created a disturbance for the tenant in unit #4. The tenant in unit #4 reported to the landlord’s agent that the tenant applicant said he would continue to jump on the floor every hour on the hour until the tenant in unit #4 stopped complaining about the decorations.

The landlord’s agent also provided copies of emails and a letter provided by the tenant in Unit #4, as well as an email and letter provided by a friend of the tenant in Unit #4. The first is an email from the tenant in Unit #4 which states: “The tenant in Unit # 9 was using the washing machine repeatedly from Friday November 4 at 930am until 6pm when I went out for the evening and Sunday November 6 as 12 noon to 7:30pm. As usual it backed up into my kitchen sink. I don’t know if it was used on Saturday November 5 because I was out all day from 7am to 5pm.” The second email from the tenant in Unit #4 states: “Thank you for your letter of concern, and your promise of taking action with the tenant and situation in suite #9. If you feel that I should edit my attached letter in any way, please call me and I will adjust it.” The letter from the tenant in Unit #4 states that the tenant feels unsafe in the apartment and fears that future actions may be taken against the tenant and the tenant’s dog, and since the Hallowe’en incident the tenant’s stress level and health have been very poor with an increase of migraine headaches. The letter then describes the Hallowe’en incident stating that tenants had set up decorations annually, and the first year the only access was through a slit in the black plastic they had erected, but since the tenant was new to the building, it was accommodated. The second and third years, decorations avoided the tenant’s access. This year, the tenant in Unit #5 advised that the tenants in Units #5 and #9 were again planning decorations, and the tenant in #4 was agreeable so long as the access was not blocked. No one told the tenant in Unit #4 what the plans were, and upon arriving home on October 30, 2011 there was a triangular wooden frame set up right against the entrance. The tenant in Unit #4 left a note for Unit #5 stating that the

tenant was not happy with the door possibly being blocked. The tenant was then disturbed by loud banging on the living room ceiling at 10:00 a.m. sounding like someone was jumping on the floor, which went on for about half a minute. The tenant then heard voices outside the door, and found several tenants there, including the tenant in Unit #9. The tenant in Unit #9 spoke in a threatening tone, "that he would continue to make this loud noise hourly unless I agreed to tell him what would be acceptable regarding keeping my entrance accessible. I told him that ideally I wish this was not happening. He said 'Tough, this happens every year.' Then he changed his tone and said 'I just want to know what will work for you.' He discussed 2 options of the design. To end the conversation I agreed to one of his options. I was feeling very nervous and threatened throughout this conversation." The letter then goes on to describe that the tenant continued to use the washing machine after being told by the landlord and City inspector to not use it, and that the machine was used almost constantly through the days and evenings of October 14, 15 and 16, 2011.

The other email states that given the unpredictable and threatening behaviour that the writer witnessed, the writer can understand the concern that the tenant has about his own safety and that of his dog. The email also states, "I am attaching a letter regarding what I have experienced about the washing machine, and the incident over the Halloween decorations, with respect to the tenant in suite #9," and "If you feel that I should edit any of this letter, please let me know." The landlord's agent testified that neither letter was edited, nor did the landlord's agent ask either person to edit the letters. The letter confirms the issue of water backing up into the sink in Unit #4, and states that this person was at the unit and heard the conversations between the property manager, inspector and tenant of Unit #9, who was very cooperative and polite. The letter further confirms the noise on October 31, 2011 which was very loud and prolonged banging like someone was jumping up and down, so violent that the writer was surprised the plaster ceiling didn't break. The noise went on for about half a minute. The writer also heard voices outside the door of Unit #4, and the writer remained in the living room listening to the conversation and heard the tenant from the unit above, in a threatening tone, say that if he didn't cooperate with the Halloween decoration plans, he would continue to make this prolonged and excessive noise 'hourly on the hour'. The letter states that the physical and verbal outburst was frightening, threatening and intimidating for the writer and the tenant. Once the tenant agreed to the decorations, the tenant from Unit #9 suddenly stopped being threatening and became very accommodating. The writer also states that the tenant is fearful and was visibly shaken, and the incident has provoked excessive stress and migraine headaches.

When asked if the landlord's agent had spoken to the writer, the agent responded that he had not. Further, when asked if a police report had been filed, the landlord's agent responded that none had been filed.

The landlord caused a notice to end tenancy to be issued to the tenant on November 30, 2011 which was served personally, and the tenant provided a copy of it for this hearing. The notice is dated November 29, 2011 with an expected date of vacancy of December 31, 2011. The reasons for issuing the notice are:

"Tenant or a person permitted on the property by 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"

No other tenants have complained about the tenant applicant, but the tenant applicant was warned verbally about the disturbances.

The landlord also testified that previous hearings have been conducted by the Residential Tenancy Branch, and copies of two of those Decisions have been provided by the tenant.

The tenant testified that the washer and the dishwasher that were installed were removed on November 7, 2011. Further, the appliances were installed by a previous tenant and were purchased when this tenant moved into the rental unit. The tenant had been living in the complex but in a different unit prior.

The tenant further testified that if the doorway to Unit #4 had not been partially obstructed on Hallowe'en, kids would knock on the door. The group of tenants had an annual event for handing out candy from the complex rather than from individual apartments which was also a fund-raising event. The tenant further testified that the tenant in Unit #5 talked to the tenant in Unit #4 and it was agreed. Further, the tenant in Unit #4 has 2 other exits so access is not restricted to the front door. The decorations used had been stored in the tenant's apartment (Unit #9) and there were lots of people moving stuff from that suite. The tenant also has a weight set, and if someone was moving it, the carpet has no insulation under it, so it may have been loud. The tenant denies jumping on the floor, and said, "Have you ever seen a fat man jump?"

The tenant also stated that the 2 letters provided by the landlord have been written identically, and the tenant feels the landlord edited the letters. The tenant sees this as

another attempt by the landlord to evict for reasons other than stated in the notice to end the tenancy.

The tenant also provided a copy of a Residential Tenancy Branch Decision dated November 23, 2011, which dealt with an application made by the tenant for an order that the landlord make repairs to the unit, and for a rent reduction. The Decision states that the tenant reported a list of 40 or more items for the landlord to attend to, and that the tenant had filed for dispute resolution 7 times dealing with requests for repairs, and that most of those items had either already been addressed or will be the subject of a judicial review that the tenant had applied for. The Decision also states that the landlord felt the tenant was hoping for renovations to the entire unit. The Dispute Resolution Officer found that only 2 items that had not already been dealt with, and the landlord had agreed to have both items inspected and repaired if necessary. The Analysis portion of the Decision states that the Dispute Resolution Officer found that the landlord had in the past acted responsibly and responded to complaints in a timely manner, and that the tenant is a habitual complainer which reduced the validity of the complaints. The tenant's application was dismissed without leave to reapply with the exception of the repairs agreed to by the landlord.

The tenant also provided a copy of a Residential Tenancy Branch Decision dated May 26, 2011, which dealt with applications filed by the landlord and the tenant. The landlord had applied for an Order of Possession for cause, and the tenant had applied for an order cancelling the notice to end tenancy. The reason for ending the tenancy was for repeated late rent payments, and the parties had a dispute over repairs made by the tenant. The last late rent payment was rejected by the landlord because the cheque was not issued by the tenant, and was not dated. The Dispute Resolution Officer found that a third party cheque was acceptable and a missing date on the cheque did not make the cheque invalid. The notice to end tenancy was cancelled.

The tenant also provided letters written by other tenants in neighbouring units, which all describe the tenant as helpful and neighbourly. At least two of the letters describe incidents of the landlord's agent sneaking or snooping around but has not addressed any concerns of the tenants, and has continuously harassed this tenant by posting notices but not addressing issues. Further, one letter speaks to the "fits of anger" from the tenant in unit #4, "...while on crystal meth." The letter also states that the tenant in unit #4 has twice accused the writer of having a dog, which is apparently not true.

Analysis

I have read the evidentiary material provided by both parties. None of the parties who wrote the letters were available for cross examination. If I were to accept any of the letters as sworn testimony, I would have to accept all as sworn testimony, or none at all. If I do not consider the letters, the only evidence before me is the sworn testimony of the landlord's agent and the tenant. The landlord has described unreasonable disturbances to one tenant only and the tenant denies that any tenants have been unreasonably disturbed. Further, the landlord did not deny the testimony of the tenant that the tenant did not install the appliances; they were in the rental unit when the tenant moved in and the tenant purchased them allowing the previous tenant to not have to move them from the rental unit. The parties have obviously hoped that the material would all be considered in this Decision, and I accept that.

In the circumstances, I find that the landlord's agent has failed to establish that the tenant has caused disturbances. I further find that the tenant in Unit #4 is a smaller man and is intimidated by the tenant in Unit #9, but that is not cause to evict a tenant. The two tenants obviously have a personality conflict. I further agree with the tenant that the tenant in Unit #4 and the friend of that tenant have designed their letters in an identical fashion. Perhaps they did it together, although the tenant in Unit #9 feels the landlord's agent has edited the letters for the purposes of this hearing.

With respect to the washing machine incident, I also find that the landlord has failed to testify as to the true facts. The landlord testified that the tenant installed the washing machine. The tenant testified that the appliances were installed by a previous tenant. I find that the landlord has not provided all of the correct facts, but did not deny the testimony of the tenant that the appliances were installed by a previous tenant. I find the testimony of the landlord to be misleading.

I have also reviewed the Decisions provided by the tenant. When comparing the Decisions to the letters written by other tenants, I find that the landlord has failed to establish that the landlord has cause to evict the tenant. I do not, however, accept that the tenant has any color of right to block any entrance of any other tenant's rental unit even for a fund raising event.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

Pursuant to Section 62(3) of the *Residential Tenancy Act*, I order the tenant to comply with the *Act* by refraining from blocking another tenant's doors, and allowing other tenants' use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I order the tenant deduct that amount from a future month's rent payable.

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: December 19, 2011.

Residential Tenancy Branch