



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC

Introduction

The tenant applied to cancel a Notice to End Tenancy for Cause.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on March 2, 2012, be cancelled?

Background and Evidence

The tenancy commenced on August 1, 2007; the tenant pays rent on the first day of each month. She resides in the home with her adult son.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the rental unit on April 2, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenants has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Put the landlord's property at significant risk.

The tenant resides in the upper unit of an older home; there is a rental unit in the basement, which is the source of the majority of the complaints. The City of Kelowna purchased the home after the tenancy had commenced. The home had been renovated at some point in the 1990's; the landlord has no knowledge of the quality of the construction or any sound-proofing measures that may have been made as part of the renovation.

The landlord stated many attempts had been made in the past to solve noise issues reported by previous occupants. The landlord provided an email dated June 2009; reported by an administrative clerk, that a neighbour from across the street complained of numerous people coming and going from the property, he was told that unless illegal activity was suspected there was nothing the City could do to stop people from coming and going.

On January 17, 2010, the previous occupant of the lower unit gave written notice ending her tenancy alleging that noise had been on-going and not resolved. This email mentioned noise from the furnace, rolling chairs, music, the coming and going of children and teenagers that had disturbed her quiet enjoyment.

The current occupant moved in on November 1, 2011 and as a result of complaints made by the occupant of the lower suite, the landlord issued a November 22, 2011, letter of warning to the tenant.

The November 22, 2011, letter outlined a number of issues such as calls received from neighbours due to non-stop vehicle traffic and numerous animals at the house. The tenant was warned she was allowed only 2 vehicles on the property. The occupant in the lower unit reported suffering from constant disturbances from noise, music and constant people traffic. The letter indicated the tenant would receive no further warning.

On March 1, 2012, the occupant of the lower unit submitted a detailed list of her complaints, which included a diary of vehicular traffic, the number of people who came and left the upper unit and general comments in relation to the activity of the tenant. The note mentioned squeaky chair legs, people talking, people pointing at her window and items being dropped on the floor. The report covered the time between November 1 and February 29, 2010. The notations included comments such as February 24, 2012:

- Black pick-up 7:30 p.m. stayed few minutes;
- 1 white SUV in front of house; and
- 1 green Ford left and returned with 1 boy.

On February 21, 2012, the occupant of the lower unit recorded:

- 1 boy walked in
- 3 people dropped off
- 1 green car
- Dark grey SUV stopped by few min.
- White Ford, roof top stopped by few min.
- 1 boy left 4 p.m.
- 1 boy left shortly after 4:05 p.m.
- 1 boy left 4:10 p.m.
- 1 boy stayed 30 min, left and came back
- 1 green Ford returned and stayed
- 1 white Civic stopped by
- 1 boy left with shopping card
- 1 green Ford left 11:45 p.m.
- 2 people green Ford 1 p.m.
- 2 other left walking
- 2 cars green & black very noisy 10:45 p.m.
- 1 person arrived 12:03 a.m.; and
- 1 green ford stay 1:30 a.m.

During the month of February, 2112, numerous diary entries were made reflecting similar notations. The landlord received this information and on the next day, March 2, 2012, issued the 1 Month Notice to End Tenancy for Cause; no contact was made with the tenant to discuss the matter.

The tenant responded that she has made every attempt to respond to the concerns of the lower occupant. She has removed her rolling chairs and done what she can to minimize the sounds of what she believes are part of normal living. The tenant has a busy social life and does have friends coming and going; she occasionally cares for a friend's dog and admitted sometimes things are dropped on the floors. She believes the sounds are the result of this older home, which has linoleum and hardwood floors.

Previous occupants of the lower unit provided a letter indicating they had lived on the property for 2 years, during which time the tenant was in the upper unit. These individuals stated that they felt the tenant was respectful and they never felt the need to complain about any noise issues. The tenant obtained a letter from her next door

neighbour of 4 years, who wrote that she finds the tenant and her family to be conscientious and helpful and that she has no complaints.

Several other letters of support to the tenant from friends were provided as evidence.

Analysis

The tenant has applied to cancel a Notice ending tenancy for cause issued on March 2, 2012; the effective date of the Notice was April 2, 2012. The Act includes a provision which I find corrects the effective date of the Notice to April 30, 2012.

In a case where a tenant has applied to cancel a Notice ending tenancy for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

There was no evidence before me of any significant interference to the occupant of the lower unit or the landlord, or evidence that the tenant has placed the landlord's property at significant risk. I have considered the remaining reason on the Notice; alleging the tenant has unreasonably disturbed the occupant.

After considering all of the written and oral submissions, I find that the landlord has provided insufficient evidence to show that the tenant has:

- unreasonably disturbed another occupant or the landlord.

The issue before me is to determine whether the tenant has unreasonably disturbed or significantly interfered with quiet enjoyment of another occupant. Landlord and tenant common law provides the covenant of quiet enjoyment which provides:

At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

It is commonly accepted that unreasonable and ongoing noise is a breach of the covenant of quiet enjoyment.

The question is in assessing what is unreasonable. *Black's Law Dictionary, sixth edition*, defines reasonable as follows:

"Fair, proper, just, moderate, suitable under the circumstances."

While unreasonable is defined as:

"Irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid."

I have no doubt that the sounds of the tenant and her guests moving about in the upper unit and the coming and going of people from the unit is disturbing the other occupant; however, I must consider whether the disturbance is the result of unreasonable activities that are interfering with the occupant's right to quiet enjoyment.

Often the measurement of the significance or unreasonableness of one's actions is measured against what is expected to occur outside of normal hours. For example, playing of radios and television after certain hours can cause annoyance to other occupants.

I have considered the evidence before me and find that the occupant of the lower unit has found herself living in a basement suite above which resides an individual with a busy personal life. The tenant has guests coming to her unit to visit; people come and go; the sounds of which I find are to be expected from normal day-to-day living.

There was no evidence before me of late-night disturbances; parties at all hours or attendance by the police investigating legitimate concerns. The daily diary kept by the occupant shows that indeed the tenant has visitors and that people come and go from the unit.

I find that the tenant has a right to engage with friends, to have visitors, to move about in her unit without the fear of the consequences of dropping items or having the occupant hear the sound of voices; these are the signs of normal day-to-day living and are not unreasonable activities. Further, I found the individual notations of the occupant supported the tenant's submission that she does indeed have a busy personal life.

The landlord has no knowledge of what, if any, sound-proofing was installed between the floors of the 2 units, but from the evidence before me, it appears that this older, wood-frame home has not been retrofitted to take into account the transfer of sound. The tenant has made efforts to minimize noise; she removed her rolling chairs, she

does not have guests visit late into the night and she becomes upset when something is dropped on the floor, however; I find that the tenant also has the right to enjoy her home without the fear of causing a disturbance as the result of having guests or moving about her unit.

Previous occupants of the lower unit, who lived on the property for 2 years, at the same time as the tenant, reported no problems with the tenant; and while the landlord stated those individuals had complained, this was in direct conflict with the email those individuals had provided to the tenant for use during this hearing. I found the email had considerable weight.

The letter from the tenant's neighbour of 4 years was compelling; this person finds the tenant to be an excellent neighbour.

The landlord may wish to obtain advice on possible sound-proofing steps that could address concerns of the occupant of the lower unit. The landlord is at liberty to install wall to wall carpeting or to make any other alterations to the unit in an attempt to minimize what I find to be a problem with sound transfer within the home and differing expectations in relation to day-to-day living and lifestyle.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47 of the Act.

The 1 Month Notice to End Tenancy, dated March 2, 2012, is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

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 04, 2012.

Residential Tenancy Branch