



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act) or the tenancy agreement; and for a monetary Order for money owed or compensation for damage or loss.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy. The balance of the Tenant's applications are dismissed, with leave to re-apply.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask questions, to call witnesses, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence, with the exception of documents submitted to the Residential Tenancy Branch on July 03, 2012. All of the documents submitted to the Residential Tenancy Branch by the Landlord prior to July 03, 2012, which the Tenant acknowledged receiving, are accepted as evidence for these proceedings.

The female Landlord stated that on July 02 copies of the documents submitted to the Residential Tenancy Branch on July 03, 2012 were placed under the Tenant's door and in her mail box. The Tenant stated that she did not receive these documents. As these documents were not served in a manner that complies with the timelines established by the Rules of Procedure and the Tenant does not acknowledge receipt of the documents, I refuse to accept these documents as evidence. The Landlord was given the opportunity to describe these documents at the hearing.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside,

Background and Evidence

The Landlord and the Tenant agree that on June 02, 2012 the Tenant received a One Month Notice to End Tenancy for Cause. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In support of the Notice to End Tenancy for Cause the Landlord stated that on two occasions the Tenant reported observing garbage, including condoms, outside her rental unit and that on both occasions the Landlord responded to the complaint but could not locate the debris. The female Landlord stated that she attempted to contact the Tenant after being unable to locate the debris but she could not make contact with the Tenant.

The Tenant stated that she did report observing garbage and one condom near her rental unit and that she phoned on a second occasion about the same items after the debris was not removed in a timely manner.

In support of the Notice to End Tenancy for Cause the Landlord stated that on two occasions the Tenant reported that the occupant of unit #104 was smoking in her rental unit; that they responded to the complaint within ten or fifteen minutes on both occasions; and that they were never able to detect the smell of smoke.

The Tenant stated that she frequently detects a strong smell of smoke in the residential complex and she believes the smell emanates from unit #104 as the smell is strongest beside the entrance to that unit.

In support of the Notice to End Tenancy for Cause the Landlord stated that the Tenant placed a note on her door in which she directed the Landlord not to speak with her, in person or by phone, and to communicate only in writing. The Landlord contends that this note damages the Landlord's reputation.

The Landlord and the Tenant agree that the Tenant has made numerous complaints about the occupant living above her; that the Tenant regularly reports being disturbed

by that occupant moving around her rental unit, which are noises that are commonly accepted to be daily living activities; and that the Tenant reports the noises occur at different times of the day and commonly during the night when the Tenant is trying to sleep.

The Landlord stated that they have investigated the complaints and have determined that the upper occupant has trouble sleeping; that the occupant does not walk heavily and they have never observed her to make an unreasonable amount of noise; that they asked for access to the Tenant's rental unit so they could make an independent assessment of the noise level and they were refused entry; that they provided the upper occupant with an area rug to minimize the noise transference; that they offered the Tenant an alternate rental unit; and that they eventually informed the Tenant that there is nothing more they can do to minimize the noise.

The Tenant stated that she believed the occupant of the upper unit was disturbing her right to the quiet enjoyment of her rental unit. Upon being advised that the occupant of the upper rental unit was entitled to use her rental unit for daily living activities, which included moving about her rental unit at any time of the day or night, providing she is not being unreasonably loud, the Tenant committed to making no further complaints to the Landlord or the upper occupant regarding noise associated to daily living activities, even if they occur during the night.

The Witness for the Landlord stated that the Tenant has frequently complained about noise from her walking in her unit during the night; that she explained to the Tenant that she suffers from insomnia; that approximately once per week the Tenant would pound on her ceiling to express her displeasure about noise; that during their final discussion about the problem the Tenant "berated her about her sleep disorder"; that the Tenant was not yelling, but was speaking at an elevated level; and that she would be happy if the Tenant simply stopped complaining about the noise.

Analysis

I find that the Landlord has submitted insufficient evidence to establish that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In determining this matter I have placed no weight on the fact that the Tenant reported observing garbage outside her rental unit on two occasions. Although I accept the Landlord was unable to locate the garbage, I find there is insufficient evidence to conclude whether it was an unfounded report or the Landlord was simply unable to locate the debris, in part, because she was unable to communicate directly with the Tenant.

In determining this matter I have placed little weight on the fact that the Tenant reported

smelling smoke in the residential complex on two occasions. Although I accept the Landlord was unable to detect the smell of smoke when they attended ten to fifteen minutes after receiving the report, I find there is insufficient evidence to conclude whether it was an unfounded report, whether the Landlord was simply unable to detect the smell of smoke after the passage of time, or whether the Tenant simply has a more sensitive sense of smell than the Landlord.

I have placed little weight on the above two issues, in part, because the Tenant has a right to report legitimate concerns to the Landlord and the Landlord can manage those reports in a manner that minimizes any inconveniences to the Landlord. In these circumstances, for example, the Landlord can direct the Tenant to report all non-emergency complaints in writing, which will enable them to investigate the complaints at their convenience. The Landlord also retains the right to direct the Tenant to refrain from complaining about smoking on the basis that they have investigated two previous reports and found them to be unfounded, assuming the Landlord can establish that their investigation into those two complaints has been diligent.

In determining this matter I have placed little weight on the fact that the Tenant placed a note on her door directing the Landlord to communicate with them in writing, as I find the Tenant has a right to make such a request. I do accept that placing the note on her door, where other occupants can read it, is insensitive and should not be repeated. While this isolated act is not, in my opinion, grounds to end a tenancy at this time, the Tenant should be aware that it may constitute grounds to end the tenancy if she continues to post notices that undermine the reputation of the Landlord.

I find that this tenancy should not end simply because the Tenant frequently contacted the Landlord to report being disturbed by the upper occupant. In my view the Tenant has a right to report such concerns and the Landlord has an obligation to respond to those concerns. In these circumstances, I find that the Landlord responded appropriately to the concerns when they provided the upper occupant with an area rug; when they met with the upper occupant to make a personal assessment of the noise; when they asked for access to the Tenant's unit so they could make an independent assessment of the noise level; and when they offered another unit to the Tenant.

As the Landlord has diligently investigated the noise complaints I find that the Landlord could have minimized any further disruptions regarding this issue by clearly informing the Tenant, in writing, if necessary, that she should refrain from making further complaints to the Landlord or the upper occupant regarding daily living noises in the upper unit. As the Tenant committed at the hearing on July 03, 2012 that she will not make further complaints about daily living activities, either to the Landlord or to the upper occupant, and I have informed the Tenant that the upper occupant has the right to use her rental unit for the purposes it was intended, the Tenant should clearly be aware that continued complaints about daily living noises could constitute grounds to end her tenancy.

Conclusion

As the Landlord has failed to establish grounds to end this tenancy, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause and I find that this tenancy shall 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: July 04, 2012.

Residential Tenancy Branch