



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenancy commenced in June 2011 and the tenant is required to pay rent of \$725.00 on the 1st day of every month. On October 10, 2012 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the tenant's door. The tenant received the Notice that same day and filed to dispute the Notice within the time limit provided by the Act.

The Notice has an effective date of November 30, 2012 and indicates the reason for ending the tenancy is that the *"tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord"*.

The landlord submitted that the tenant has repeatedly disturbed other occupants, including the resident managers, with excessively loud music on several occasions. In support of this position the landlord provided a complaint letter written by other occupants on August 31, 2012 and Incident Reports dated August 17, 2012; October 3, 2012; and, October 11, 2012.

The landlord pointed out that the complaint letter refers to repeated disturbances and the complainants are considering ending their tenancy if the disturbances continue. The

landlord also testified that another neighbour of the tenant verbally confirmed that she has been disturbed by loud music coming from the rental unit.

The landlord explained that it is their practice to first talk with a tenant if that tenant is disturbing others and warn the tenant that such behaviour unacceptable before pursuing an eviction. The building managers testified that they have attended the rental unit on several occasions to request the tenant turn the music down. One manager testified that he has attended the unit 3 or 4 times in the past year; another manager testified she attended the rental unit on one occasion; and the relief manager testified that he has attended the rental unit six times. I heard that when the managers approach the tenant about the noise level the tenant will turn the volume down but only temporarily.

One of the managers described an incident on October 3, 2012 where the volume coming from the rental unit was so loud she could hear it outside the property as she returned to the property from a walk. She and another manager knocked on the tenant's door but there was no response. Only after the manager went to the tenant's window was she able to get his attention.

Finally, even after the tenant received the Notice to End Tenancy the building manager had to return to the tenant's unit to respond to excessively loud music. The landlord was of the position there is no alternative but to end this tenancy so as to protect the quiet enjoyment of the other occupants and that the tenant can find more suitable living accommodation for his lifestyle. The landlord requested an Order of Possession with an effective date of November 30, 2012

The tenant was of the position that he is not violating city noise by-laws which permit a person to make noise until 11:00 p.m. The tenant also suggested that the occupants who complained about his music are sensitive to noise because they are very elderly and that complaints had not been received before they moved into their unit in July 2012.

The tenant did recall the incident of October 3, 2012 when the manager knocked on his window. The tenant explained that he heard the knocking on his door but he was in the middle of a conversation so he did not answer the door. The tenant also acknowledged that he and some friends were listening to the half-time show during a football game on that date and that it may have been somewhat loud.

The tenant submitted that some excessive noise was attributable to his new computer system but that he has since figured out how to disconnect the sound.

Finally, the tenant was of the position that the disturbances occur only occasionally and such instances are not sufficient cause to end his tenancy.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

A landlord has the statutory obligation to protect the quiet enjoyment of the persons occupying the residential property. This includes the right to use their rental unit and common areas free from unreasonable disturbance or significant interference. Accordingly, where one tenant is shown to be unreasonably disturbing or significantly interfering with the quiet enjoyment of other occupants the landlord may end the tenancy for cause.

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides examples where a breach of quiet enjoyment may be found, including “unreasonable and ongoing noise”. The Policy Guideline also provides that temporary discomfort or inconvenience does not constitute a loss of quiet enjoyment.

Upon consideration of everything presented to me, I find the landlord has provided sufficient evidence, in the form of verbal testimony and documentation, to satisfy me that the tenant has unreasonably disturbed other occupants of the residential property by playing his music excessively loud on numerous occasions. I accept that these incidents occur fairly frequently and have caused more than a temporary discomfort for the other residents. I am also satisfied the landlord has brought this issue to the tenant’s attention several times yet the disturbances continue to recur.

I am not convinced that allowing the tenancy to continue will result in improved behaviour as evidenced by the disturbance that occurred shortly after the Notice to End Tenancy was issued and the tenant’s belief that he has the right to make noise up to 11:00 p.m. While the tenant may not be in violation of a city noise by-law the Residential Tenancy Act establishes that the tenant has an obligation to not unreasonably disturb other occupants of the residential property in order to avoid eviction proceedings.

In light of the above, I uphold the Notice and dismiss the tenant’s application.

Pursuant to section 55 of the Act, a landlord shall be provided an Order of Possession upon request where a tenant files to cancel a Notice to End Tenancy and the tenant’s

application is dismissed. Therefore, I grant the landlord's request and I provide the landlord with an Order of Possession effective November 30, 2012 at 1:00 p.m. to serve upon the tenant.

Conclusion

The tenancy shall end November 30, 2012 and the landlord has been provided an Order of Possession effective that date.

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: November 21, 2012.

Residential Tenancy Branch