

DECISION

Dispute Codes: MT CNC OLC FF

Introduction

The tenants applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to allow the tenants more time to make an application to cancel a Notice to End Tenancy, and to recover the filing fee.

The tenants, two agents for the landlord (the “agents”), and three witnesses for the landlord attended 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 evidence and to make submissions to me.

The parties confirmed that they received the evidence package from the other party and had the opportunity to review the evidence prior to the hearing. I have considered all of the relevant evidence that was submitted in accordance with the rules of procedure, and testimony provided.

Preliminary and Procedural Matters

At the outset of the hearing, the tenants requested an adjournment to allow time for them to receive two police reports which according to the tenants were crucial in disputing the 1 Month Notice to End Tenancy For Cause (the “1 Month Notice”). I find that an adjournment would have prejudiced the landlord by delaying the landlord's request for an order of possession indefinitely. The tenants provided no timeframes for when the police reports would be available and as a result, the tenants were advised that their request for an adjournment was denied in accordance with the rules of procedure. The tenant's were also advised that it was their application and they had the opportunity to call witnesses and receive witness statements prior to the hearing.

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 tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 1 Month Notice. I find that not all the claims on the tenants' Application for Dispute Resolution are sufficiently

related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 1 Month Notice and the tenants' application to recover the filing fee at this proceeding. The balance of the tenants' applications is dismissed, with leave to re-apply

A witness for the landlord, RL, was affirmed at the outset of the hearing and was advised that he would be placed on hold until he was required to provide his testimony. One hour into the hearing and shortly before he was called upon to provide his testimony, witness RL disconnected from the teleconference and did not call back into the hearing. The hearing ended after seventy-eight minutes and as a result, witness RL did not provide testimony during the hearing as he did not remain on the teleconference. Two other witnesses for the landlord did provide testimony during the hearing.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be set aside or upheld?

Background and Evidence

A fixed term tenancy began on November 1, 2012 and is set to expire on April 30, 2013. Monthly rent in the amount of \$1,050.00 plus \$15.00 for parking for a total monthly rent including parking of \$1,065.00 is due on the first day of each month. The tenants paid a security deposit of \$525.00 at the start of the tenancy.

Section 21 of the tenancy agreement addendum which was signed by the tenants states:

"21. Conduct

In order to promote the safety, welfare, enjoyment, and comfort of the other occupants and the tenants of the Residential Property, the tenants and guests shall not disturb, harass, or annoy other occupants of the residential property or neighbours. In addition, noise of any kind, which in the reasonable opinion of the Landlord may be calculated to disturb the comfort of any other occupant of the residential property shall not be made by a tenant or guest, nor, shall any noise whatsoever, including the playing of any musical instrument be repeated or persisted after a request to discontinue such noise has been made by the Landlord. The tenant or tenants guest shall not cause or allow loud conversation, music, television, radio, or an irritating noise to disturb the peaceful enjoyment of other occupants at any time, and in particular between the hours of 10:00 p.m. and 9:00 a.m..."

[reproduced as written]

The tenants confirmed receiving the 1 Month Notice on December 31, 2012. The tenants applied to dispute the 1 Month Notice on January 8, 2013 which was on time. As a result, there is no need to consider the tenants request for additional time to dispute the 1 Month Notice as the tenants applied to dispute the 1 Month Notice on time. The effective date on the 1 Month Notice is listed as January 31, 2013.

The landlord specified the following reasons on the 1 Month Notice for Cause:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's first witness JA, testified that she lives above the tenants and one unit over and has been living in the building for seven years. Witness JA stated that there were no problems with noise from the tenants until December 25, 2012 when she was amazed at the amount of noise coming from the tenants and that her walls were shaking and the "boom" from the bass sound was so loud from the tenants' music. Witness JA stated that originally she did not know where the music came from so she contacted the resident manager who confirmed it was coming from the tenants. The resident manager later stated to the witness that the tenants would not turn down their music. The music began at approximately 10:30 a.m. and continued for an hour until she left her rental unit with her son, who was staying with her for the holidays. Witness JA stated that her son who had just arrived from another province to visit was upset at the loud music and advised her to move. When the witness returned later that day, the tenants' music was not on and she has not heard music since. The tenants decided not to cross-examine the witness.

The landlord's second witness RS, testified that she lives directly below the tenants and has lived in the building for four years. Witness RS stated that she heard music after midnight on December 15, 2012 and December 22, 2012 and stated that for about a month on Saturdays between November and December 2012, she would hear a constant bass sound but did not complain about the noise until she saw the resident caretaker in the lobby which the caretaker confirmed during the hearing.

Witness RS stated that although the tenants' music was bothering her, she did not want to bother the resident caretaker with her complaint. Since December 25, 2012, witness RS testified that she has heard the tenants loud music on Friday, January 18, 2013 at

12:10 a.m. until well after 1:00 a.m. RS also heard the tenants loud bass music on January 19, 2013 from about 3:00 p.m. to approximately 6:30 p.m. RS testified that on Saturday January 26, 2013 at 12:15 a.m. she heard “roughhousing” where the tenants sounded like someone was being beaten up as there were “fighting sounds”. And on January 30, 2013, the day before this hearing, witness RS stated that she heard music from the tenants between 2:00 p.m. and 3:30 p.m. when she left her rental unit but did acknowledge that the music was a little quieter on January 30, 2013. Witness RS stated that the tenants knocked on her door and advised RS that if the music was too loud she could just come and knock on their door and they would turn it down, however, RS stated that she was not comfortable leaving her rental unit after midnight to advise the tenants to turn down their music.

One of the tenants asked witness RS under cross-examination whether there were any previous noises and witness RS confirmed that “yes” on the dates she specified there were many dates where she was annoyed by their music. The second tenant was warned for berating the witness and after being warned, stated that he did not have questions for witness RS.

After witness RS left the hearing, the tenants stated that RS should have knocked on their door if she had any concerns about their music being too loud. Tenant ML stated that he lived in a different unit in the building about six months prior to this tenancy starting. The agent confirmed that there were no previous concerns during that tenancy. The tenants described that they have two sound systems, the first sound system is comprised of three satellite speakers and a “tiny” six inch subwoofer that is not amplified. The second sound system is a computer speaker system and that both sound systems have been played at one time at times. The tenants stated that the police attended on two occasions and advised them to turn down their music. The tenants denied receiving a fine for loud music by the police.

Later in the hearing, tenant RS offered to “remove the amplifier” if they could remain in the rental unit until the end of their lease which the landlord would not agree to. The agent made a verbal request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – The tenants deny that they have significantly interfered with another occupant or the landlord. I do not accept the testimony of the tenants for two reasons. The first reason is that the tenants, by their own testimony, contradicted themselves during the hearing. The tenants first stated that their sound system are not amplified and yet later in the hearing, offered to “remove the amplifier” if they could remain in the rental unit until the end of their lease.

Secondly, the two witnesses for the landlord provided detailed evidence of the noise and the related disturbances caused by the tenants due mainly to their loud music. The tenants decided not to cross-examine the first witness and berated the second witness, however, did not dispute the testimony of either witness. I do not find it reasonable that the tenants felt that other tenants should have knocked on their door to advise them of their loud music, especially given that the music was on after midnight which was not disputed by the tenants.

Therefore, **I dismiss** the tenants’ application to cancel the 1 Month Notice due to insufficient evidence, without leave to reapply. **I find** the landlord has met the burden of proof to prove that on the balance of probabilities the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord. As a result, I do not need to consider the second reason specified in the 1 Month Notice.

I uphold the 1 Month Notice issued by the landlord and find that it is valid.

Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and taking into account the agent's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **January 31, 2013 at 1:00 p.m.**, the effective date on the 1 Month Notice. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that court.

Conclusion

I dismiss the tenants' application to cancel the 1 Month Notice to End Tenancy for Cause.

I grant the landlord an order of possession effective **January 31, 2013 at 1:00 p.m.** This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 31, 2013