



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for cause. The tenant, an advocate for the tenant, an agent for the landlord and three witnesses for the landlord participated in the teleconference hearing.

The tenant did not submit any documentary evidence aside from proof of service of the hearing package. The landlord stated that they served all but one page of their evidence on the tenant by registered mail. The tenant stated that she did not receive the landlord's documentary evidence. The tenant acknowledged that she received one notice card but she may have misread the notice, as she did not know that she had to pick up the mail. I found that the tenant was deemed served with the landlord's evidence, aside from one page of late evidence.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On November 29, 2012, the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reasons for ending the tenancy are as follows: (1) the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; (2) the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and (3) the tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

Landlord's Evidence

The landlord stated that since the outset of the tenancy in 2009, the tenant has caused unreasonable noise disturbances. The landlord has received numerous written and verbal complaints about the tenant playing loud music. The landlord's agent stated that she has heard the tenant playing music so loud that it could be heard through two fire doors, in the lobby of the building, and when the agent attempted to serve the tenant a document, the noise was so loud that the tenant could not hear the knocking on her door. A handwritten clause on the tenancy agreement reads "no loud music," and it appears that the tenant initialled beside this clause.

The Public Guardian and Trustee is named as a tenant on the tenancy agreement, and the strata agent sent several letters to the Public Guardian for strata fines the tenant incurred for noise infractions. The Public Guardian paid the fines, and the strata agent viewed payment of the fines as acknowledgement of the noise violations. The strata agent has received written complaints about the tenant from at least six other residents in the building, and other residents have made verbal complaints.

Two residents of the building appeared as witnesses for the landlord. One resident, EB, lives directly above the tenant's unit. She stated that her quiet enjoyment is constantly disturbed by the tenant's loud music, either from a stereo or the radio. On some occasions, EB has had to leave her unit because it is vibrating from the noise below. The unreasonable levels of noise may occur at any time of the day or night. EB has asked the tenant to be quiet, and the tenant sometimes responds with threats and yelling. On more than one occasion, the tenant while intoxicated has also attended at EB's unit and knocked on her door and other residents' doors. EB has written numerous letters to the landlord to complain about the tenant.

Another witness for the landlord, DS, lives across the hall from the tenant. DS has heard the tenant playing extremely loud music. Moreover, the tenant travels throughout the building almost daily, banging on doors and trying to borrow milk, sugar or tea. The tenant is intoxicated when she does this. DS has made at least 14 written complaints about the tenant since 2009.

In the hearing, the landlord orally requested an order of possession effective January 31, 2013.

Tenant's Response

The tenant stated that she feels like the landlord is harassing her. The tenant did not receive the noise violation letters that were sent to the Public Guardian, and therefore the tenant was not aware of the problems. The role of the Public Guardian is to manage the tenant's money. The tenant does not believe her noise is excessively loud. Whether the tenant's noise is excessively loud is subjective.

The tenant did not provide any response to the landlord's evidence that the tenant unreasonably disturbs other occupants in the building by going through the halls, while intoxicated, knocking on others' door and attempting to borrow food from them.

Analysis

I am concerned that the landlord may not have effectively communicated their concerns about noise violations directly to the tenant. I do not find that payment of the strata fines by the Public Guardian amounted to an acknowledgement by the tenant of the noise violations.

However, I find that the notice to end tenancy is valid on the basis that the tenant has unreasonably disturbed other occupants, particularly where the tenant has gone from door to door in an intoxicated state, knocking on other occupants' doors. Two witnesses gave testimony that they directly experienced these disturbances, and the tenant did not deny those allegations. Both of these witnesses presented clear, credible testimony, and the tenant was offered an opportunity to ask questions of these witnesses or otherwise respond to their evidence.

The landlord orally requested an order of possession in the hearing, and I accordingly must grant an order of possession.

As the tenant's application was unsuccessful, she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

The tenant's application is dismissed.

I grant the landlord an order of possession effective January 31, 2013. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: January 16, 2013

Residential Tenancy Branch

