



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Carvel Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, PSF, LRE, AAT, LAT

Introduction

This hearing was convened by way of conference call in response to the tenants to cancel the Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities required by law; to suspend or set conditions on the landlords right to enter the rental unit; to allow access to the rental unit for the tenant or the tenants guests; to authorize the tenant to change the locks to the rental unit.

The tenant and landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. Both Parties confirmed receipt of evidence and confirmed that they had opportunity to review it. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the tenant's application to cancel the Notice to End Tenancy, and I dismiss the remaining claims with liberty to re-apply.

Issue(s) to be Decided

Is the tenant entitled to cancel the Notice to End Tenancy for cause?

Background and Evidence

The parties agree that this tenancy started on November 01, 2012. Rent for this unit is \$725.00 and is due on the 1st of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause on January 28, 2013. This notice was served in person and has an effective date of March 01, 2013. The notice has been provided in evidence and provides the following reasons to end the tenancy:

- 1) *the tenant or a person permitted on the residential property by the tenant has*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*
- 2) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (ii) *adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

(iii) Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord's agent testifies that they have received complaints from other tenants regarding noise from this tenants unit. The landlord's agent testifies the complaints have come from the tenant living below the tenant and the neighbouring tenant. The landlord has provided a copy of the complaints from the tenant in the unit below. The landlord's agent testifies that these are long term tenants one has lived in the building for 13 years and one for three years. These tenants complain of noise such as banging, walking, bass music, a fan and television. The landlords agent testifies that they have to protect these tenants right to quite enjoyment of their rental unit and these tenants are losing sleep as the noise occurs often late at night.

The landlord's agent testifies that the tenant has been served with complaint letters regarding this noise but the other tenants are still complaining. The building manager testifies that he spoke to the tenant about noise complaints from other tenants on November 14, and in December, 2012 on three separate occasions. On November 14, 2012 the tenant living below the tenants unit also posted a letter to the tenant asking him to be quiet at night and respectful of other tenants. That letter has been provided in evidence.

The landlord's agent testifies that the tenant has not complied with s. 32 of the *Act* with regard to maintaining health, safety and sanitary standards in the rental unit. The landlord's agent testifies that a fire inspector came to the tenants unit with the building manager on Janaury14, 2013 after written Notice of entry was posted. This inspection was for the annual inspection of the fire smoke alarm tests and was conducted by a fire safety company at 8.30 am. The landlord's agent testifies that when they entered the tenants unit the fire alarm inspector and the building manager were shocked at the condition of the tenants unit. The tenants belongings were piled high to the ceiling,

some in boxes. The living room looked like a storage locker and the kitchen area was piled with dirty dishes and food waste.

The building manager testifies that later that day at 1.00 p.m. the landlord's agent entered the tenant unit and took photographs of the condition of the unit which have been provided in evidence. At 5.00 p.m. that day the landlord's agent and manager returned to the tenants unit and knocked on the door for several minutes. When they received no response they entered the tenants unit to check on the tenant as the fire alarm inspector had concerns about the tenant's health. The landlord's agent testifies that he called the tenants name and knocked on the tenant's bedroom door. The tenant was in bed and put his head out of the bedroom door and spoke to the landlord's agent.

The landlord's agent testifies that the tenant was given two weeks to clean the unit and remove the piles of belongings which constructed a fire hazard for the tenant, the other occupants of the building and any fire officers who had to be called to put out a fire.

The landlord's agent testifies that after January 28, 2013 there did not appear to be an improvement so the tenant was given a Notice to End Tenancy on January 28, 2013.

The building manager testifies that he had concerns about the tenants belongings and debris were blocking the electrical heaters which could be potential dangerous and cause a fire. The building manager testifies that he returned to the tenants unit on February 01, 2013 with an electrician, they knocked on the tenants door and yelled out the tenants name, when they received no response they entered the tenants unit under the emergency regulations to install lockout breakers on the electrical heater breakers to prevent them being turned on accidental. The building manger testifies that the electrician said that the tenants unit was the worse he had ever seen and the breakers had to be installed to protect the other tenants and the landlords building.

The building manager testifies that he tried to contact the tenant again to determine if the tenant had complied and removed his fuel load problem. However there was no response.

The landlord's agent testifies that on February 10, 2013 the landlord's agent and tenant had a meeting to view the tenants unit again. They found there was still a large amount of belongings, debris and fuel load issues present. It had been organised a little and a few items had been removed into the tenant's truck. However the bedroom walls were still stacked as high as the ceiling. The landlord's agent testifies that they took more photographs of the tenants unit at that time but have not provided these in evidence as the camera was later broken. At this time they also spoke to the tenant about the noise complaints.

The tenant disputes the landlord's claims. The tenant testifies that when the landlords entered his unit on January 14, 2012 the tenant had only been living in the unit for just over two months and the tenant had been very busy at work so was still unpacking his boxes and sorting through his belongings to determine what he wanted to keep. When the landlord's agent came to inspect the unit the tenant testifies that he had boxes open and was going through them. The tenant testifies that the electrical heaters were not covered with his belongings and he had left a space around them. The tenant testifies he was only advised of issues with the heaters on February 10, 2013 when the landlord came back to take photographs. The tenant testifies that he had tidied and cleared a lot of his belongings. The tenant agrees that there are stacked boxes in the bedroom but the tenant testifies he has stacked them against the adjoining wall to try to sound proof this wall for the neighbouring tenant.

The tenant agrees that there were a few days worth of dirty dishes in his sink because at that time the tenant had been unwell. The tenant testifies that he also has a problem

washing his dishes at night because the downstairs tenant complains about the noise it makes.

The tenant testifies that the landlord's agent and manager have entered his unit unlawfully without providing proper notice to do so. On one occasion the tenant testifies that he was ill in bed when he was woken by the smoke alarm. The tenant testifies that he was not aware the landlord had entered the unit again on that day to take photographs until the February 10, meeting. The tenant testifies that the landlord told the tenant to remove 75 percent of his belongings. The tenant objects to this and states the tenant should not have to do so to satisfy the landlord.

The tenant testifies that he still has some belongings in boxes as he does not want to unpack his belongings in case he is evicted. The tenant testifies that he has no wish to remain in the rental unit and will move out as soon as possible.

The tenant testifies that he does not make noise on purpose to disturb other tenants. When the next door neighbour tenant complained the tenant rectified this by turning off his small music system, he uses headphone when listening to the television or music and does not play music loudly. The tenant testifies that he does have a window fan installed and that has also been turned off.

The tenant testifies that when he received the letter from the tenant downstairs he showed this letter to the building manager who informed the tenant that it would not be a problem as the tenant downstairs had complained about the three previous tenants living in the tenants unit. The tenant testifies that he offered to go and talk to the downstairs tenant and take her some flowers but the building manager said he would deal with it and they are looking at evicting that tenant.

The tenant testifies that he does not make unreasonable noise. Any noise is normal living noise such as walking around his unit, chopping vegetables, washing up, flushing the toilet, taking a shower after work, and opening and closing the patio door. The downstairs tenant complains about all this noise and her claims are exaggerated. The tenant testifies that on one occasion the building manger knocked on the tenant's door after another noise complaint had been received. The building manager told the tenant that he had been outside for over three minutes and had not heard any noise coming from the tenants unit.

The building manager confirms the tenant's testimony that he had told the tenant that the tenant downstairs had complained about the three previous tenants. The building manager testifies that at first he did not believe the tenant downstairs but then when he started to get complaints from the neighbouring tenant he started to believe her noise complaints. The building manager testifies that he has not heard any exxcesive noise other than a fan from the tenants unit. The tenants guest turned the fan off as soon as the building manager informed him of the noise.

The parties presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have considered the photographic evidence and find the tenant's rental unit did represent a health hazard and potential fire risk at the time the photographs were taken on January 14, 2012. However the tenant has testified that he has cleared some of his belongings and the only reason he has not unpacked more of his belongings is because he intends to move from the rental unit as soon as possible. I find from the evidence presented that it is difficult to make a decision about what constitutes as debris and what constitutes as personal belongings. While I accept that the tenants rental unit was seriously overcrowded on January 14 there is no corroborating evidence from the landlord to show that the tenants unit is still in the same condition or that it remains a fire safety risk or is a health and safety hazard. The landlord went to the trouble to enter the tenants unit without proper notice on two separate occasions on January 14, 2013 one of which to take photographs yet the landlord entered again on February 10, 2013 to take more photographs yet did not provide this in evidence.

With regards to the landlords claim that the tenant has significantly disturbed other tenants by making excessive noise late at night; the building manager admits that the downstairs tenant has complained about the three previous tenants regarding noise. The tenant argues that any noise is not intentional and is no more than normal living noise. When any additional noise has been complained about the tenant has immediately taken steps to remedy that to ensure the tenant does not disturb the neighbors. Again the landlord has the burden of proof that the tenant has deliberately and significantly disturbed other occupants and I am not satisfied that landlord has met the burden of proof that the noise from the tenants unit is above and beyond normal living noise.

In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled.

Furthermore I caution the landlord to ensure that proper Notice is given to a tenant before entering a tenants rental unit for any purpose other than that described under s.

29 of the *Act* or if an emergency exists as detailed under s. 29(f) of the *Act* which says a landlord may only enter without proper notice if an emergency exists and the entry is necessary to protect life or property. The landlord must have significant reason to think the tenant's life is at risk and not simply rely on a third parties advice that the tenant appeared to not be healthy.

I caution the tenant to ensure the tenants belongs are stored and managed in a way that does not constitute a health or safety hazard.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, January 28, 2013 is cancelled and the tenancy will continue.

The tenant is at liberty to file another application for the reminder of the tenants claim not heard today.

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: March 05, 2013

Residential Tenancy Branch

