



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MT, FF and O

Introduction

This hearing was convened on an application by the tenant on May 2, 2013 seeking to have set aside a one-month Notice to End Tenancy for cause dated April 22, 2013 and setting an end of tenancy date of May 31, 2013.

The tenant also sought more time to make application (unnecessary as the application was made on time), a monetary award for loss or damage under the legislation or rental agreement, recovery of the filing fee for this proceeding and other remedies.

Issue(s) to be Decided

Should the Notice to End Tenancy of April 22, 2013 be upheld or set aside? Is the tenant entitled to a monetary award?

Background and Evidence

This tenancy began March 1, 2013 under a fixed term tenancy agreement set to end on March 1, 2014. Rent is \$1,200 per month and the landlord holds a security deposit of \$600 paid at the beginning of the tenancy.

The rental unit is one of four in a converted duplex.

During the hearing, the landlord gave evidence that he had served the Notice to End Tenancy after receiving complaints from two neighbouring tenants about noise coming from the rental unit.

One of the tenants, EJ, who lives below the rental unit, gave evidence during the hearing that he has been frequently disturbed by noise from the upper tenants since he moved in to the building in mid-April. EJ stated that he works night shifts and for that reason he is particularly needful of reasonable quiet during the day. He also submitted into evidence a written statement articulating the disturbance and its effect on him.

In addition, the landlord gave evidence that while painting the lower unit on April 7, 2013, the week after the subject tenancy began, he stated that he could hear loud noise from the subject unit for nearly a full three hours, and the other landlord, his father, had found it necessary to advise the tenant of the excessive noise. I note that April 7, 2013 was a Sunday

Another tenant who lives in the adjoining section of the duplex submitted a written statement dated May 20, 2013 in which he said that for the first month of the tenancy, he found the noise from the children excessive and intolerable, but that he had not been disturbed by them for the preceding month.

The applicant tenant gave evidence that her two children are four and seven years old, and while she attempts to moderate their activities, she believes their behaviour is quite within the norm of children in their age group. She stated, also, that during the week, she and her husband are at work, one child is in school and the other is in day care.

The tenant had stated in her application that she would prefer to move on June 30, 2013 which may have opened the door for consideration of a settlement agreement under section 63 of the *Act*. However, that appears to have been contingent on her anticipated success in her monetary claim as she stated that, as a teacher, she has no income during July and August and had not budgeted for the added expense of moving. The landlord declined to assist with moving expenses as part of a possible settlement agreement.

Therefore, the parties deferred to an arbitrated decision with the one exception that they have agreed to treat the tenancy agreement as a month to month tenancy to facilitate a voluntary end of the tenancy.

The tenant also stated that the landlord and downstairs tenant had attempted to vary the proportioning of the utilities billings from 60 per cent upper and 40 percent lower to a 70/30 split. The landlord has remedied that matter, but he was reminded that he cannot require one tenant to collect utilities from another tenant.

The tenant has also submitted a number of monetary claims most of which were made under the assumption that she had moved including: loss of wages for moving time; cost of double rent to facilitate a two week move; truck rental; moving supplies, hydro disconnect, and carpet cleaning. The claims also included evidence preparation costs.

Analysis

All parties concurred that it is probably best that this tenancy ends. The applicant tenant is under extra stress because of the complaints about noise, the downstairs tenant is distressed by the noise and the landlords simply wish to ensure the quiet enjoyment of all tenants. However, efforts to create an agreement as to how and when to end the tenancy were met with an unfortunate confluence of inability, intransigence and intolerance.

Section 47(1)(e) of the Act provides that a landlord may issue a one-month Notice to End Tenancy for cause in circumstances in which a tenant or the tenant's guests unreasonably disturbed another occupant or the landlord.

In the present matter, I have the evidence of the landlord that while painting the lower unit on a Sunday one week after the tenancy began that he heard an unusual amount of noise from the rental unit. The tenant who moved into that suite gave oral and written evidence that he has been disturbed by the sound of the tenant's children, and another neighbouring tenant stated that while he had initially been disturbed by the tenants, he had not been bothered for the preceding month.

Taking into account that the landlord's sample was brief and during a weekend when families are probably at their most boisterous, that the major complainant is a shift worker who did not ascertain sound levels before entering into his tenancy, and the apparent fact that the rental building is not adequately sound proofed, I am not persuaded that the sounds emitting from the rental unit constitute unreasonable disturbance.

Therefore, I find that the Notice to End Tenancy of April 22, 2013 should be set aside.

As to the tenant's claim for a monetary award, all claims that assumed the tenancy had ended are dismissed without leave to reapply. Claims for hearing preparation costs are not accommodated by the legislation and they are also dismissed.

As the application has succeeded on the major issue of having the Notice to End Tenancy set aside, I will allow the tenant to recover the filing fee for this proceeding from the landlords. To that end, as authorized by section 72 of the *Act*, I hereby order that the tenant may retain \$50 from the next rent due.

Conclusion

The Notice to End Tenancy of April 22, 2013 is set aside and the tenancy continues.

By agreement of the parties, the rental contract is amended to become a month to month tenancy rather than a fixed term tenancy.

The landlords are reminded that the Notice to End Tenancy was served on a discontinued form and that they should obtain current copies from our offices or website at www.rto.gov.bc.ca.

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: May 29, 2013

Residential Tenancy Branch