



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northern Property Rental
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2013.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was posted on the Tenant's door, which declared that the Tenant must vacate the rental unit by October 30, 2013. The Agent for the Landlord stated that the Notice was posted on September 12, 2013 and the Tenant stated it was located on that date. The reasons for ending the tenancy noted on the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that 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 the tenant has breached a material term of the tenancy that has not been corrected within a

reasonable time.

The Landlord submitted a letter from the occupant of the rental unit below the Tenant, dated September 04, 2013. The author indicates that this is not his first complaint; and that that he was awakened on Monday, Tuesday, and Thursday in the early morning hours by the Tenant fighting, yelling, and stomping.

The Landlord submitted a second letter from the occupant of the rental unit below the Tenant, dated September 12, 2013. The author indicates that the Tenants yell at each other when they are watching movies or listening to music; that they laugh and pound on the floor, which he believes is an attempt to bother him; and that they still wash dog urine over their balcony onto his patio.

The Tenant stated that he and his co-tenant are not unreasonably noisy. He acknowledges that they do have a young child that occasionally bangs things and that he and his co-tenant do occasionally argue. He acknowledged that he had an argument with his co-tenant on October 04, 2013 which he ended by leaving for the night; that he called the police on October 05, 2013 because he was concerned that his co-tenant was going to harm herself; that the police handcuffed him and placed him in a police car on October 05, 2013; and that he was released without charge.

The Agent for the Landlord stated that the occupant of the rental unit below the Tenant has made several complaints about the Tenant sweeping dog urine and feces onto the lower patio. She stated she has observed dog feces on a child's bicycle located on the patio of unit #109, which appears to have been dropped from the Tenant's balcony. She stated when she asked the male Tenant about the feces he denied responsibility.

The Tenant stated that his dog does occasionally urinate/defecate on his deck; that he attempts to remove it as soon as possible; that on at least two occasions some of the feces has fallen onto the lower patio; that he has apologized to the occupant living below him; and that he has cleaned the feces from the lower patio.

The Landlord submitted a third letter from the occupant of the rental unit below the Tenant, dated October 18, 2013, in which he declares that the feces is being deliberately washed onto his patio and that the Tenant(s) are amused by the occupant's response to the problem.

The Landlord submitted a letter from the occupant of unit #304 which the Landlord received on August 13, 2013. In this letter the author declared that he/she had her/his dog on a leash when the Tenant's dog, which was not on a leash, charged him/her. The Tenant stated that he always has his dog on a leash and that the dog has never charged anyone.

The Landlord submitted a letter from the occupant of the residential complex which the Landlord received on August 16, 2013. In this letter the author declared that she observed the female Tenant kick, and break, a side door of the residential complex.

The Tenant initially stated that the female Tenant could not have broken the door as she was at work when the door was broken. He subsequently stated that the female Tenant told him that she was in the rental unit on the time/date of this incident; that she heard people arguing; and that she then heard sounds that led her to believe the door had been broken.

The Landlord submitted a letter from the occupant of unit #205, dated September 15, 2013. In this letter the author declared that he/she had her/his dog on a leash when the Tenant's dog, which was not on a leash, attacked his/her dog. The author stated that when she spoke with the female Tenant about the dog the Tenant was loud and aggressive. The Tenant stated that he believes the female Tenant always has the dog on a leash.

The Landlord submitted documentation to show that occupants of the residential complex have reported being disturbed by the Tenants in early October of 2013.

The Landlord submitted 3 breach letters and one cautionary letter that were served to the Tenant between August 09, 2013 and September 04, 2013. The Tenant acknowledged receipt of all of the letters except the one dated August 16, 2013, which he did not receive until he received it as evidence for these proceedings.

Analysis

I find that the letter from the occupant of unit #304, in which the author reported being charged by the Tenant's unleashed dog, is more compelling than the Tenant's testimony that his dog is always leashed and has never charged anyone. I find that the Tenant, who faces eviction, has more grounds to misrepresent this event than the author of the letter, who is a seemingly unbiased party who would have no obvious reason to misrepresent the event. I therefore find that the incident reported by the occupant of unit #304 occurred as reported by that occupant. In reaching this conclusion I was influenced to some degree, by the fact that a third party reported a similar event, which lends credibility to this report.

I find that the letter from the occupant of unit #205, in which the author reported being attacked by the Tenant's unleashed dog, is more compelling than the Tenant's testimony that he believes the female Tenant always keeps the dog on a leash. As the Tenant was not present when this incident allegedly occurred, I find that his speculation that the dog was on a leash is not sufficient to discount the evidence presented by the author of this letter. I therefore find that the incident reported by the occupant of unit #205 occurred as reported by that occupant. In reaching this conclusion I was influenced to some degree, by the aforementioned incident, which lends credibility to this report.

On the basis of the testimony of the Tenant, I find that on at least two occasions the Tenant has dropped dog feces from his deck onto a patio belonging to another occupant. On the basis of the testimony of the Agent for the Landlord, I find that on one

occasion the feces landed on a bicycle belonging to a child living in the lower rental unit. On the basis of the written documentation from the person living below the Tenant, I find that these occurrences disturbed him and that he was also disturbed by the Tenant's response to the incidents. I find that incidents of this nature would significantly disturb many people. I find that to be particularly true when the incident has happened on more than one occasion during a tenancy that has lasted for less than three months.

I find that the letter from the Landlord received on August 16, 2013 regarding the broken door is more compelling than the Tenant's testimony that the female Tenant did not break the door. The Tenant's testimony was completely contradictory. He initially stated that the female Tenant could not have broken the door because she was at work when the door was broken and he subsequently stated that the female Tenant told him she heard the door breaking. As the author of the letter has no apparent reason to misrepresent this event, I find that the female Tenant broke this door.

On the basis of the letters from the occupant in the lower rental unit, I find that the occupant has been awakened on several occasions by yelling and fighting in the rental unit. I find these reports are supported, to some degree, by the letters from other occupants of the residential complex who reported overhearing the Tenants fighting in October and by the Tenant's testimony that there were at least two disturbances in the unit in early October. While the incidents in October cannot be relied upon to end the tenancy, I find they are indicative of a pattern of behaviour that supports the information provided by the occupant of the lower unit and they indicate that the Tenant continues to disturb other occupants.

When all of these incidents are considered in their entirety, I find that the Tenants have unreasonably disturbed other occupants of the residential complex in their short tenancy. I therefore find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*.

I find that the Application for Dispute Resolution has been without merit and I dismiss the Tenant's application to recover the fee for filing this Application.

Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy, I dismiss the application to set aside the One Month Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing, which is effective two days after it is served upon the Tenant..

The Agent for the Landlord #2 stated that the Landlord would be willing to permit the tenancy to continue until November 15, 2013, providing the Tenant pays \$417.50 in rent by November 04, 2013. I therefore order that the Order of Possession may not be served until November 13, 2013, unless the Tenant does not pay rent of \$417.50 by November 04, 2013. To provide clarity, the Order of Possession may be mailed on November 08, 2013 if it served by registered mail, in which case it will be deemed

served on November 13, 2013 and/or the Order of Possession may be posted on the door of the rental unit on November 10, 2013 if it served by registered mail, in which case it will be deemed served on November 13, 2013.

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*.

October 31, 2013

Residential Tenancy Branch