



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenant has been residing in the rental unit since December 2010 and is currently required to pay rent of \$784.00 per month. On September 17, 2013 the landlord posted a 1 Month Notice to End Tenancy for Cause (the Notice) on the door of the rental unit. The Notice has a stated effective date of October 31, 2013 and indicates the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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
- 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 submitted that several noise complaints, by way of phone calls and emails, have been received from the former and current tenants occupying the unit below the

rental unit. The landlord provided copies of the emails received from the tenants living below the rental unit in March 2013 and September 2013.

The landlord submitted that a written warning notice dated March 27, 2013 was given to the tenant so as to advise her that several complaints had been received regarding noise from her unit, in particular loud music and late night partying; that the behaviour is unacceptable and in violation of her tenancy agreement; and, that further complaints would result in further action by the landlord, including eviction. The letter specifically refers to Schedule A, Section 4 of the tenancy agreement which provides for conduct of a tenant.

The landlord submitted that both the former and current tenants of the unit below the rental unit had approached the tenant directly about the noise coming from her unit in addition to complaining to the landlord. Further, when the building manager responded to a complaint of very loud music the music was so loud it was heard in a large area of the building. Upon determining the loud music was coming from the rental unit the building manager spoke to the tenant about the noise level.

The tenant denied that she has late night parties; however, the tenant acknowledged that the former and current tenant of the rental unit below her unit did approach her on two occasions about the noise levels coming from her unit. The tenant also acknowledged that the building manager approached her about the music coming from her unit but the tenant submitted that she turned it down after the manager spoke with her. The tenant also acknowledged receiving the landlord's warning letter of March 27, 2013.

The tenant's legal counsel pointed out the landlord did not provide as evidence a copy of Schedule A, Section 4 referred to in the landlord's warning letter of March 27, 2013; and, did not produce the former or current tenant of the unit below, or the building manager, as witnesses. The tenant's counsel also argued that a considerable amount of time passed between the warning letter of March 27, 2013 and the complaint of the current tenant made in September 2013.

The tenant's counsel submitted that the tenant suffers from insomnia and has balance problems due to a car accident that took place in March 2011. As such, the tenant is often up in the middle of the night and entertains herself with music and/or cooking. The tenant's balance problems may lead to the tenant dropping things or banging sounds.

The tenant indicated that she is very distraught about the thought of moving from the rental unit and was willing to “do anything” to maintain her tenancy including wearing earphones while listening to music and being more aware of the noise she makes late at night.

The landlord was of the position the tenant’s behaviour is unlikely to change beyond a temporary basis given the previous warnings given to the tenant, in person and in writing, and the tenant’s repeated disturbances of others. The landlord pointed out that the landlord has already lost one tenant due to the tenant’s actions and the current tenant of the unit below the tenant’s unit is now complaining. The landlord explained that the unit below the tenant’s unit was vacant for a couple of months which attributed to the lapse in time between complaints about the noise from the rental unit.

The landlord acknowledged that Schedule A, Section 4 was not included in the evidence package but that it accompanies the tenancy agreement the tenant signed and was reproduced word-for-word in the March 27, 2013 warning letter. The landlord pointed out that, although witnesses did not appear at the hearing, the tenant had acknowledged that she had been approached about noise by both the former and current tenants of the unit below and the building manager.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities.

I find the landlord did not provide any submissions or evidence that the tenant is engaged in illegal activity and I do not consider that reason for ending the tenancy, as indicated on the Notice, any further.

I find that without a copy of Schedule A, Section 4 of the tenancy agreement I am unable to verify its existence, or wording, or that it is a material term of the tenancy agreement. Therefore, I find the landlord did not prove the tenant breached a material term of the tenancy agreement.

I was provided submissions by the landlord with respect to the tenant disturbing other occupants of the residential property; therefore, I proceed to consider whether the

landlord has established that the tenancy should end because “the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant ... of the residential property” as provided under section 47(1)(d)(i) of the Act.

In reading the email complaints from the tenants living below the tenant I note there is a distinction in the type of disturbing noises they describe. The former tenant complains of loud music and late night partying taking place in March 2013. As such, the landlord’s warning letter serves to notify the tenant that she is disturbing others by way of loud music and late-night partying activities. The current tenant living below the tenant complained of what sounded like things dropping on the floor, repeatedly, and banging on the walls, as well as loud music.

While the former tenant indicated she was moving due to the ongoing noise from the tenant’s unit, the current tenant living downstairs requests that the landlord “please talk with her”. The landlord responds to the complainant tenant on September 16, 2013 indicating the landlord will “take care of this issue right away” and to let the landlord know if the noise persists. It would appear that the landlord proceeded to issue the 1 Month Notice on September 17, 2013 as I was not presented evidence that the landlord talked to the tenant or issued a warning letter to notify the tenant that sounds of falling objects and banging on the wall was disturbing to the occupant living below the tenant.

Upon hearing from the parties and considering all of the evidence presented to me, I have little doubt that the tenant’s activities have disturbed other occupants at the residential property, in particular the persons occupying the unit directly below the tenant’s unit, on a number of occasions between March 2013 and September 2013. When people live in multiple-unit buildings one should expect to hear noises of other tenants from time to time. However, a tenant that unreasonably disturbs another occupant on the residential property may be evicted under the Act. This ground for eviction is intended to preserve the other occupants’ right to quiet enjoyment of their unit. Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides that a breach of quiet enjoyment may be found where noise is excessive or repeated and on-going. Therefore, I find that excessive noise levels or repeated and on-going noise disturbance is a basis for finding unreasonable disturbance.

While it is clear the tenant has been previously warned about loud music disturbing others, I find I am uncertain that the tenant was aware that she had unreasonably disturbed another occupant when she dropped things on the floor or banged on the wall until the tenant living below her talked to her on September 10, 2013. However, I was not provided any evidence to indicate the behaviour continued or recurred between

September 10, 2013 and the time the landlord issued the 1 Month Notice on September 17, 2013.

Given the distinction in the type of noises the other occupants have complained about, and in keeping with complainant tenant's request of September 11, 2013, I find the appropriate response to the most recent complaint would be a final warning to the tenant.

While I appreciate the landlord's concerns that any improvement in behaviour will be temporary I am optimistic the tenant will appreciate the opportunity she is being provided by way of cancellation of the 1 Month Notice to demonstrate that she is willing to "do anything" keep her tenancy, as she stated during the hearing.

In light of the above, I cancel the 1 Month Notice issued September 17, 2013 and this decision shall serve as a final warning to the tenant that any noises that she, or a person she permits on the property, creates that unreasonably disturbs another occupant (such as loud music, late-night partying, banging on the floors and walls) shall not be tolerated and that further disturbances of other occupants may result in issuance of another 1 Month Notice to End Tenancy for Cause.

The tenant is now considered to be fully aware that should the landlord receive another complaint that the tenant or a person permitted on the property by the tenant has unreasonably disturbed another occupant of the residential property, the landlord shall be at liberty to issue another 1 Month Notice.

As the tenant claimed to be unfamiliar with Appendix A, Section 4 of her tenancy agreement I suggest the landlord provide the tenant with another complete copy of her tenancy agreement for the tenant's future reference.

I order the parties share in the cost of the filing fee paid for this Application for Dispute Resolution. The tenant may deduct \$25.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The 1 Month Notice issued September 17, 2013 has been cancelled. By way of this decision, the tenant has been given a final warning with respect to disturbing other occupants of the residential property. The tenant is awarded one-half of the filing fee she paid for this Application and may deduct \$25.00 from a subsequent month's rent in satisfaction of this award.

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: October 25, 2013

Residential Tenancy Branch

