



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, OLC, RP, LRE, LAT, RR, RR, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy; to cancel a One Month 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 make repairs to the unit, site of property; to suspend or set conditions on the landlords right to enter the rental unit; to authorize the tenant to change the locks of the rental unit; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; other issues; and to recover the filing fee from the landlord for the cost of this application. At the outset of the hearing it was explained to the tenant that she had filed to cancel the Notice within the allowable time frame. The tenant therefore withdraws her application for more time to file an application to cancel a Notice.

The tenant and landlord 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. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s 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 One Month Notice to End Tenancy for cause and to recover the filing fee and I will not deal with the remaining sections of the tenants claim at this hearing and they are dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy set aside?

Background and Evidence

The parties agree that this tenancy started on March 01, 2013. The tenant rents a unit in a duplex above two garages. The landlord rents one of the heated garages to another tenant and that tenant also has use of the kitchen and bathroom in the other side of the duplex which the landlord uses as an office for her business. Rent for this unit is \$1,000.00 per month and is due on the 1st day of each month.

The landlord testifies that the tenant was served One Month Notice to End Tenancy for cause by posting it to the tenant’s door on September 11, 2013. This Notice has an effective date of October 31, 2013 and gives the following reason to end the tenancy:

- 1) *the tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

The landlord testifies that the tenant has sent 150 e-mails to the landlord since the start of the tenancy; these e-mails relate to cleaning, minor deficiencies, the use of the garage door, and complaints about the other tenants. The landlord testifies that the tenant works for the City within the bylaw department and has used her position there to intimidate the landlord by sending emails from her work e-mail account and using work headed envelopes.

The landlord testifies that for seven months the tenant has paid rent by email and last month the tenant paid by cheque this caused the landlords problems with paying her mortgage as cheques take 10 days to process at the landlord's bank and the tenant was aware of this.

The landlord testifies that when the other tenant moved into his unit he needed to park his car in the garage. The tenant was asked not to park in front of his garage and was allowed to use the landlord's parking space in the evenings which the landlord uses for her business during the day. The landlord testifies that the tenant purposely left her car, during the day, in the landlord's parking space for the landlord's customers and walked to work. Later the landlord removed some hedges to provide parking for the tenant outside the tenant's door.

The landlord testifies that the tenant has significantly disturbed another tenant. The tenant yelled at this tenant on the day he moved in as the other tenant was unloading his belongings at 9.15 p.m. The tenant has also put a note on the other tenant's garage door to ask him to restrict his use of the garage. The tenant has e-mailed the landlord to ask the landlord to restrict that tenant's use of the garage to once a day as it disturbs the tenant. The tenant wanted to set unreasonable hours for the other tenant's use of the garage to after 7.30 a.m. and before 9.00 p.m. on weekdays and after 9.00 a.m. and before 9.30 p.m. on weekends. The landlord testifies that this is unreasonable to ask the landlord to place restrictions of this nature and notified the tenant of this. However the

tenant continues to complain. The landlord testifies that the tenant also yelled at the other tenant when he showed up at 9.00 p.m. on a Sunday night saying that he was making too much noise.

The landlord testifies that she has also received numerous complaints from this tenant about the other tenant making noise with his television and stereo before 9.00 p.m. at night. The landlord orally requests an Order of Possession at the hearing.

The tenant disputes the landlord's claims. The tenant testifies that she is not sure how many e-mails have been sent to the landlord but some are in response to the landlord's e-mails. The tenant agrees some of these have been sent from her work e-mail address but states this was not to intimidate the landlord as the tenant does not work for bylaw enforcement but in the planning department and it is acceptable with her work place for the tenant to use her email account for personal use.

The tenant testifies that when the landlord restricted her parking the tenant sought advice from the bylaw department as it is against zoning in the area to park on the street. The tenant testifies that this information is open to any citizen to obtain from the bylaw department at the City.

The tenant testifies that she had a personal reason for paying rent by cheque for last month. As long as the landlord receives the rent by the first day of the month then this meets the tenant's obligations under the tenancy agreement. The tenant testifies that each e-mail transfer also costs the tenant \$1.50.

The tenant testifies that she has always walked to work except for two days a week that the tenant's dog goes to doggy daycare. The tenant pays a reduced car insurance for pleasure use and not business use which allows the tenant to use her car for work

purposes for six or eight days a month.

The tenant disputes that she has yelled at anyone. The tenant testifies that the previous tenant living in the other unit was a concern with drugs and strangers knocking on the tenant's door late at night. The landlord informed the tenant that a new tenant was moving into the other unit on August 01, 2013 and the tenant was woken up on July 28, 2013 when she heard someone in the garage below her unit. The tenant testifies that she freaked out thinking someone was breaking into the garage and e-mailed the landlord. When the tenant saw it was the new tenant she went down and said to him that he had scared her as she was in bed. The tenant testifies that the new tenant said derogatory things to her about her being in bed at 9.00 p.m. The landlord later agreed that the hour was late as she had also been in bed.

The tenant testifies that the noise of the garage door opening and closing disturbs her as there is no sound proofing between the garage and her unit. The other tenant also uses the internal door which slams shut and this also wakes the tenant. The tenant testifies that she asked the landlord if a soft closer could be put on that internal door to soften the sound.

The tenant testifies that she did speak to the other tenant but he put his hands over his ears and said he could not hear her. The tenant disputes yelling at the other tenant. The tenant testifies that she is a quiet tenant and wants to live in a quiet home. The other tenant has now started to play loud music and have his television on loudly and due to the lack of sound proofing between his garage unit and the tenants unit the noise disturbs the tenant and not the other way around.

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.

The landlord has testified about a quantity of emails being sent to her by the tenant however having reviewed the emails provided in evidence I find they are sent in connection to issues related to the tenancy and therefore cannot be deemed to be threatening or harassing. If a tenant's work place allows an employee to use their work email account for personal e-mails then I cannot see why the landlord would take exception to this as the tenant has not violated her work ethic as the tenant does not work in the bylaw section of the City but rather the planning department. The information provided by the tenant from the City bylaw office is information that is accessible to all members of the public.

I do not find the landlords claim that by paying rent by cheque is reason to end the tenancy and can see no reason how this has significantly interfered with or disturbed the landlord. Furthermore if a tenant was provided a parking space with her tenancy then the landlord cannot remove or restrict that right without following s. 27 of the *Act*. The landlord has provided no corroborating evidence to show that the tenant has significantly disturbed another occupant as it becomes one person's word against that of the other that the tenant has yelled at the other tenant in a manner that would unreasonable disturb the other tenant. The landlord did not ask the other tenant concerned to attend this hearing to give sworn testimony or submit to cross examination. Furthermore if there have been disagreements between the two tenants the landlord may want to investigate this tenants concern about noise and the level of sound proofing between the two units as to the cause of the noise complaints.

While I find the tenants request to the landlord to restrict the other tenant's use of the garage to be unreasonable I do not find that this request has significantly interfered with or unreasonable disturbed either the landlord or the other tenant.

Consequently it is my decision that 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.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated, September 11, 2013 is cancelled and the tenancy will continue.

As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

The reminder of the tenant's application is dismissed with leave to reapply.

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 29, 2013

Residential Tenancy Branch

