



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 928 Main Street Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This was a hearing with respect to the tenant's application to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The tenant participated with his advocate and the landlord's named representatives called in and took part in the hearing. I also heard evidence from a witness called by the tenant.

Issue(s) to be Decided

Should the Notice to End Tenancy dated August 31, 2013 be cancelled?

Background and Evidence

The rental unit is a room in the landlord's single room occupancy hotel in Vancouver. The tenancy began in May, 2011. Monthly rent is \$400.00, payable on the first of each month. The landlord served the tenant with a one month Notice to End Tenancy for cause dated August 31, 2013. The Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, that he has seriously jeopardised the health or safety or lawful right of another occupant or the landlord and that he has put the landlord's property at significant risk. The landlord also claimed that the tenant has caused extraordinary damage to the unit or the rental property. The Notice to End Tenancy was personally served on the tenant on August 31, 2013. The tenant filed an application to dispute the Notice to End Tenancy on September 6, 2013.

The landlord's representative, who is the building manager, testified as to the grounds for seeking to end the tenancy. The landlord's representative said that the tenant is noisy and his loud music, exclamations, yelling and loud banging from within the rental unit has disturbed other occupants of the rental unit. The landlord's representative who lives on the same floor of the rental property testified that he has been regularly disturbed by the tenant. The landlord submitted a copy of a note dated November 22, 2012 warning the tenant about noise levels and slamming his door. He said that he has

spoken to the tenant on numerous occasions about noise. The landlord submitted a letter from a former tenant, who complained about the tenant's noise during his stay at the rental property from March through June, 2013.

The building manager testified that the tenant was bringing bottles and other recyclables to his room where he would wash and store them before taking them to a recycling center for a refund. The landlord's representative submitted the quantities stored amounted to "hoarding" and that the tenant is creating a hazard by this practice because there is a substantial likelihood that he will bring pests into the rental unit along with the collected recyclables. He referred to still images captured by the video monitoring system that he said showed the tenant entering and leaving the rental property with bags of collected containers.

The landlord's representative testified that the tenant has been throwing garbage and debris out of his window. The landlord submitted photographs of garbage and debris found beneath the window of the rental unit. The building manager said that he has observed the tenant throwing garbage out of his window and he has been informed by other occupants and by the manager of a nightclub in the rental property that they have also witnessed this behaviour by the tenant. The landlord submitted a statement from the nightclub operator wherein he said that: "I have witnessed on numerous occasions a resident on the 2nd floor South of the building closest to (name of street) throwing garbage and various other detritus out his window.

The tenant's witness, Ms. D.B. testified that that she lived in the building across the hall from the tenant for several months. She said that she did not have any difficulties with the tenant during her stay, but there was an occupant on the same floor who made noise and was often yelling nonsense and creating a disturbance.

The tenant testified that he did bring bottles and recyclables to his room, but after the building manager spoke to him about it he stopped and has not brought recyclables to his room since then. The tenant said that the landlord's surveillance photos did not show the tenant bringing recyclables into the building; he said that they simply showed him bringing purchased supplies and groceries to his room. The tenant denied that he has caused noise problems and he said that he has never thrown garbage out of his window. He said that the garbage pictured in the landlord's photographs must have come from some other unit in the building.

The building manager noted that the tenant's witness was uncertain as to the unit that was the source of the noise on her floor of the rental property. He reiterated that he is also an occupant and continues to be disturbed by the tenant's noise, yelling and

banging in his room. He stated his certainty as the source of the noise problems, verified by other occupants who have complained about the tenant. The manager disputed the tenant's testimony that he has ceased bringing recyclables to his unit and storing them there. He said that he has observed the tenant with bags of recyclables and he said the images of the tenant show him coming into the rental unit with recyclables and also leaving with them, contrary to the tenant's testimony.

Analysis

The tenant has denied disturbing other occupants of the rental property and he testified that he has complied with the landlord's request to refrain from bringing recyclables to his room. The landlord's representative, who is the building manager, testified that the tenant has disturbed other occupants including the building manager himself. He said this conduct has continued throughout the tenancy and the tenant has ignored repeated requests to be more considerate. The building manager said that the tenant did not stop the collection of recyclables and he has observed that the tenant has continued this practice, even during the month of October. He said the tenant is adept at removing recyclables from his room before an inspection or an entry for repairs and he noted that the tenant always receives advance written notice of any such entry into the rental unit.

Although I do not find that the landlord has shown that the tenant has thrown garbage out of his window, I do accept and prefer the evidence presented by the landlord to that given by the tenant about noise and disturbance. I did not find the evidence given by the tenant's witness to be convincing; when questioned about the source of the disturbing noise, she was unable to identify a location. Her evidence concerning the tenant appears to be based on her impression of the tenant formed during chance encounters in the hallways of the rental property. I find that the tenant has significantly interfered with or unreasonably disturbed other occupants and I find that this behaviour has continued after warnings to the tenant. The landlord's representatives did not appear to be motivated by any malice towards the tenant in seeking his eviction, but rather appear to have exhausted their patience in their efforts to convince the tenant to alter his disturbing behaviour and reduce noise. I do not find there to be convincing grounds that the tenant has put the landlord's property at significant risk, but I find that the evidence as to noise and disturbance is sufficient to support the Notice to End Tenancy that has been served upon the tenant. I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant's application without leave to reapply.

Conclusion

Section 55 of the *Residential Tenancy Act* provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. The effective date of the Notice to End Tenancy was September 31, 2013, which had passed before the hearing was conducted on October 16, 2013. Pursuant to section 55 which affords me some discretion to fix the date of an order for possession I grant the landlord an order for possession effective November 30, 2013 after service upon the tenant. This will allow the tenant some time to locate other accommodation. This order may be registered in the Supreme Court and enforced as an order of that court.

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: November 1, 2013

Residential Tenancy Branch

