



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boundary Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to have the One Month Notice to End Tenancy for cause cancelled and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness 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.

Issue(s) to be Decided

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

Background and Evidence

The parties agree that this month to month tenancy started on August 01, 2009, Rent for this unit is \$850.00 per month and is due on the first day of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause on September 04, 2013. This Notice was posted on the tenant's door

and gave one reason to end the tenancy: the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testifies that the tenant living below this tenant has complained about noise from this tenants unit on numerous occasions. There have been complaints about loud music, television and video games being played late at night and early in the morning. The downstairs tenant is feeling very frustrated as their quiet enjoyment is being affected. The downstairs tenant has asked this tenant to be quiet on different occasions but is sworn at by the tenant. The downstairs tenant has had to resort to calling the police to speak to the tenant about noise from his unit. The tenant was sent a breach letter concerning disturbances on July 11, 2013. The landlord agrees that this is an older, wooden building and sound does carry between units.

The tenant was also warned about dumping his cat litter tray over his balcony. Some of this landed on the downstairs tenant's deck and a large mould of cat litter sand and feces was found under the downstairs tenant's window. The landlord testifies that she investigated where the cat litter could have come from and even spoke to the female tenant living above this tenant; however determined that it was not from her unit. The landlord testifies that she had to arrange to clean this mess up. The landlord's agent testifies that after this tenant did admit to the landlord's husband that the cat litter was from his unit but he denied making that much noise. The landlord agrees that she has not heard any noise from the tenants unit as it is often late at night when the downstairs tenant complains.

The landlord calls her witness who is the tenant living downstairs. The witness testifies that it was quiet in the unit above until 2011 and then the video games, loud music and banging started. The witness testifies that he asked the tenant to keep the noise down but the tenant told the witness to go away. The noise starts late at night and around 8.00 or 9.00 p.m. and goes on for hours until 1.00 a.m., 2.00 a.m. and even 3.00 a.m. on this occasion the witness had to call the police. The noise keeps the witness's son

and wife up. When the police came they knocked on the tenant's door but no one has answered, so the witness does not know if the police have spoken to the tenant.

The witness testifies that the tenant tells them that he works at night but the witness can still hear the video games and has heard the tenant coughing so knows the tenant is at home. The witness testifies that this goes on for three or four nights a week. The noise will also start up again between 4.00 a.m. and 6.30 a.m. The witness testifies that the tenant upstairs also dumped cat litter onto the corner of the witness's balcony. The landlord cleaned this mess up and since the landlord stepped in the tenant has not done this again.

The tenant cross examines the witness and asks the witness how loud has the tenant been since September. The witness responds that the tenant has been loud twice.

The tenant disputes the landlord's and witness's allegations against him. The tenant testifies that the witness is constantly complaining about noise. The tenant testifies that he works from 12.00 a.m. to 8.00 a.m. on four nights a week in one job and then volunteers two nights a week from 12.00 a.m. to 6.00 a.m. on another job. The tenant testifies that he is not home most nights and so how can he make loud noise all through the night.

The tenant testifies that when he first moved in he did have a roommate however the roommate moved out after four months because of the complaints about noise from the witness. The roommate said she felt threatened by this person when she was home alone while the tenant was working. The tenant agrees that he does play video games but they are not loud and he often wears headphones. The tenant testifies that neither is his music or television is on loud. The tenant testifies that he leaves for work at 10.30 p.m. and does not get home until between 8.30 a.m. and 9.00 a.m. The tenant testifies that he does not leave any music or television on when he is not at home. The tenant testifies that due to his work he is only home on a Tuesday night. The tenant testifies

that when he comes home from work in the morning he usually goes to bed around 10.00 a.m.

The tenant refers to letters from other neighbours who have stated that they have never been disturbed by any noise from the tenants unit. The tenant testifies that since September 08, 2013 the tenant has been house sitting at another unit and yet the witness has still complained about noise from an empty unit.

The tenant testifies that he did keep his cat litter tray on the balcony and this would be swept up with a dustpan and brush. The tenant testifies that he does not know how it got onto the witness's balcony but says it could have been the wind or his cat kicking the litter up when he uses the tray. The tenant testifies that since the landlord informed the tenant of this problem the tenant has now moved the cat litter tray inside his unit. The tenant disputes that he dumped the contents of his cat litter tray over his balcony and does not know where this came from.

The landlord testifies that the witness complained two times in September about noise from the tenants unit and these could have been before September 08, 2013 as the Notice to End Tenancy was issued on September 04, 2013. The landlord requests that the One Month Notice to End Tenancy is upheld and seeks an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. 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.

Therefore with regard to the noise complaints against the tenant; the landlord agrees that this is an older building and sound does carry. The witness testifies about late night noise often starting at 8.00 and continuing to 1.00 a.m., 2.00 a.m. and even 3.00 a.m. and starting again early in the morning between 4.00 a.m. and 6.30 a.m. The tenant has testified that he goes to work at 10.30 on three nights a week and 12.00 on two nights a week and does not return until 8.30 to 9.00 a.m. The landlord agrees that she has not actually heard any noise from the tenants unit but has had numerous complaints about noise from the witness. In this matter I the landlord cannot conclusively proof that the tenant has made such an amount of excessive noise late at night beyond normal living noise. A tenant is allowed to play video games and watch television and listen to music as long as this noise is not late at night. As the tenant has testified that he leaves for work around at 10.30 p.m. and 12.00 a.m. and does not return until the morning I find and it is one persons word against that of the other and therefore the landlord has not met the burden of proof that this tenant has significantly disturbed the downstairs tenant beyond normal living noise.

While I accept the frustration of the downstairs tenant if they have a young child that goes to sleep early; the landlord cannot restrict the activities of the upper tenant because of this as long as the upper tenant remains respectful of the volume he has his television, music and video games set at. The tenant must however be aware that this is an older building and that sound travels between the units.

With regard to the issues with cat litter tray contents; I find this was an isolated incident which has now been rectified by the tenant by moving the cat litter tray inside. The landlord has not met the burden of proof that the tenant deliberately dumped the contents of the cat litter tray over his balcony or swept any of the contents down onto the lower balcony.

Consequently, 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 and the tenancy will continue.

I do however caution the tenant to be respectful of his neighbors including those living below him when playing video games, watching television and listening to music as they may not appear to be loud in the tenants unit but the noise can transfer to other units and can be an extreme annoyance to other tenants. If the noise continues from the tenants unit after this hearing the landlord is at liberty to serve the tenant with another One Month Notice to End Tenancy which may result in the tenancy being ended through proper process.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated September 04, 2013 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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 18, 2013

Residential Tenancy Branch