



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Cause.

The Tenant's Advocate said the Tenant served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on December 6, 2013. Based on the evidence of the Tenant Advocate, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on June 1, 2013 as a month to month tenancy. Rent is \$546.00 per month payable in advance of the 1st day of each month. No security deposit was required.

The Landlord said they served the Tenant with a 1 month Notice to End Tenancy for Cause dated November 25, 2013 by posting it on the door of the Tenant's unit on November 26, 2013. The Tenant said he received the Notice to End Tenancy.

The Landlord continued to say that the reasons they issued the Notice to End Tenancy for Cause are the Tenant significantly interfered with or unreasonable disturbed other tenants or the landlord and the Tenant breached a material term of the tenancy agreement. The Landlord said the material term of the tenancy agreement that the Tenant breached is clause 21. Clause 21 of the tenancy agreement says "the tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbance the landlord may end the tenancy". The Landlord continued to say they have issued 4 warning letters to the Tenant for noise and poor conduct and have had a meeting with the Tenant on September 23, 2013 about excessive noise from his rental

unit. The Landlord said these letters and the meeting came as a result of 16 complaint letters from 7 other tenants. The Landlord said after each letter and the meeting the Tenant said he would modify his behaviour. The Property Manager C.K. said that after the meeting on September 23, 2013 the noise from the Tenant's unit was mostly in the daytime, but by middle to the end of October, 2013 noise levels had again increased and the noise was happening late at night again. As a result of the noise issues and complaints from other tenants the Landlord said they issued the Notice to End Tenancy for Cause dated November 25, 2013.

The Tenant's Advocate said the Tenant's wife the other occupant in the rental unit has a hearing disability so many times the TV or music is turn higher than normal so she can hear it. The Tenant said his wife now has hearing aids so they should be able to watch TV and listen to music at a lower volumes.

The Tenant's Advocate continued to say that the Tenant believes some of the other tenants in the rental complex are grouping together to evict the Tenant.

The Landlord called three other tenants from the rental complex as Witnesses to the noise and poor conduct issues. The three witnesses all wrote complaint letter to the management about the Tenant's noise and poor conduct issues.

The First Witness was N.G. Witness N.G. said she live below the Tenant and she has lost sleep due to the noise and parties that the Tenant has had since moving in. The witness continued to say the noise is loud music yelling and what sounds like fighting. The Witness said the noise is at all hours of the night and the Police have been called on a number of occasions. Witness N.G. said she has lost sleep because of the noise and she has written a number of complaint letters to the management.

The Tenant's Advocate asked the Witness N.G. if she had other issues with the Tenant and if she was trying to get other tenants to help her get the Tenant evicted. The Witness N.G. said she has talked to one other tenant in the building and she is not trying to group together with the other tenants to get the Tenant evicted. The witness said she just wants the Tenant to follow the rules of the rental complex.

The Landlord called the second witness D.D. who said he lives just around the corner from the Tenant and their balconies are across from each other. Witness D.D. said that the Tenant has had loud parties with loud music and what he thought was fighting or loud arguing. The Witness D.D. also said he feels for the other witness N.G. as she has lost sleep and the Tenant does not respect her needs in her tenancy.

The Tenant's Advocate asked the Witness D.D. if he was grouping together with other tenants to evict the Tenant. Witness D.D. said he feels sorry for Witness N.G., but he is not grouping with the other tenants to evict the Tenant. The Witness D.D said he has written complaint letters to the management about the Tenant making noise in the middle of the night so that he had to close his windows and balcony door in order to sleep.

The third witness to testify was A.K. and she said that she lived next door to the Tenant so they shared a wall. Witness A.K. said that in June, 2011 at the start of the Tenant's tenancy she was disturbed one night at 2:30 a.m. by the Tenant making loud noise. The Witness A.K. said this has happened 3 or 4 more times over the last 6 months. The Witness A.K. said she has written complaint letters to the management about the Tenant making noise.

The Tenant's Advocate asked the Witness A.K. what her unit number was. Witness A.K. said she lived in unit 305.

The Property Manager C.K. said his office is down the hall from the Tenant's rental unit and on many occasions over the tenancy he has heard loud music and loud noise coming from the Tenant's unit.

The Landlord said there has been 3 additional letters of complaint for each month of November, December and January about the Tenant making loud noise during the day and late at night.

The Tenant said that they have tried to comply with the Landlord's requests for them to be quieter and he said he thought they have been quieter. As well the Tenant said when the Police have been called they have not been found to have done anything wrong. The Tenant said they are mostly in bed and the Police come and the Police have woken them up.

The Property Manager said when the Police have been called 9 times and it has taken over an hour for them to arrive so by that time the noise has stopped.

In closing the Tenant's Advocate said the Landlord has not provided the tenant complaint letters, the other tenants are grouping together to evict the Tenant and the Tenant's wife's hearing disability may have been partially responsible for any noise in the Tenant's rental unit. As well the Tenant's Advocate said if the Landlord is successful in obtaining an Order of Possession the Tenant is requesting that Order have an effective vacancy date of February 28, 2014 as the Tenant has paid the rent and it would be difficult for him to move before that time.

The Landlord said in closing there has been a pattern of noise and poor conduct from the Tenant since the start of the tenancy, which has unreasonable disturbed other tenants as well as breaching the rules of the rental complex. The Landlord said they have had 16 complaint letters from 7 other tenants and they have issued four warning letters and conducted a meeting with the Tenant to get the Tenant to comply with the rules in the rental complex. The Landlord said they have given the Tenant more than enough opportunity to correct his behaviour and he has not done so. The Landlord said that if the Tenant is unsuccessful in canceling the Notice to End Tenancy they are requesting an Order of Possession with an effective vacancy date of February 28, 2014.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and the other tenants in the rental complex. The Landlord said that they have tried to work with the Tenant, but the noise issues created by the Tenant have not improved. It is appeared from both the Landlord's testimony, witness's testimony and the Tenant's own testimony that the Tenant has created noise and behaviour issue in the rental unit. Whether the noise issue is a result of the Tenant's wife's hearing disability it is still an issue that is disturbing the other tenants and the Landlord. As well the Tenant has disregarded the written warnings about noise and loud behaviour and the Tenant only modified his behaviour for awhile after the in person meeting with the Landlord on September 23, 2013. I find the Tenant has beached clause 21 of the tenancy agreement and it is a material term of the tenancy. As well I find the Tenant has disregarded efforts by the Landlord and other tenants to reduce the noise in his rental unit. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. In this situation all the witness have said they have lost sleep and have been unreasonably disturbed by the Tenant late at night. It also appears that the Landlord has tried to work with the Tenant, but the Tenant has not changed his behaviour on a consistent basis. Consequently I find the level and duration of the disturbances that the Tenant has caused have reached the level of **unreasonable** and **serious** that the Act calls for in order to evict someone. Consequently I dismiss the Tenants application to cancel the Notice to End Tenancy for Cause as the Landlord has established grounds to show the Notice was issued for valid reasons.

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the Act the Landlord has requested and will receive an Order of Possession with an effective vacancy date of February 28, 2014 at 1:00p.m.

Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective February 28, 2014 at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: January 28, 2014

Residential Tenancy Branch