



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

The tenant applied to cancel a 1 month Notice ending tenancy for unpaid rent issued on December 1, 2013; compensation for damage or loss; an Order the landlord comply with the Act and to recover the filing fee costs..

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant indicated several matters of dispute on his application and confirmed that the main issue to be dealt with during this proceeding was the Notice to end tenancy. For disputes to be combined on an application they must be related. Not all the claims on this application were sufficiently related to the main issue to be dealt with together. Therefore, I dealt with the tenant's request to cancel the Notice ending tenancy and dismissed the balance of the tenant's claim with liberty to re-apply.

The landlord indicated she might wish to have a witness testify; she chose not to call the witness in during the hearing.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside.

Background and Evidence

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was served on the tenant indicating that the tenant was required to vacate the unit effective February 1, 2014. The landlord had altered the Notice to reflect a 2 month period was given, as she wished to be fair and give the tenant ample time to vacate.

The reasons stated for the Notice to end tenancy were:

- that the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed the landlord;
- that the tenant or a person permitted on the property by the tenant put the landlord's property at significant risk;
- that the tenant has caused extraordinary damage to the rental unit;
- that the tenant has not done the required repairs of damage to the unit; and
- that the tenant had sublet the unit without the landlord's permission.

The tenancy commenced on May 1, 2013; the rent is due on the 1st day of each month. A copy of the tenancy addendum signed by the tenant was supplied as evidence. The addendum indicated that music, television volume and general noise should be kept to a respectful level, keeping in mind someone lives above. The addendum also noted that the unit had adequate insulation, but a loud TV could be heard. The landlord indicated that she would also keep noise to a respectful level. The addendum gave specific instructions for the handling of garbage and recycling; important in order to avoid rodents and animals.

The tenant lives in a unit, below the landlord's upper level home.

The landlord said when the tenant moved in he brought \$15,000.00 of stereo and music equipment. She would not have rented to the tenant if she had realized he would bring this amount of music equipment into the home. The landlord provided a photograph of the tenant's sound equipment.

There was no dispute that the tenant had a friend who on least several occasions entered the home through a window. The landlord had not approved an additional occupant and the tenant denied his friend was living in the unit. However, on October 1, 2013 the parties signed an agreement for rent increase to allow the roommate to live in the unit.

On one occasion the landlord found 3 people entering the home through the window. The tenant was not at home. The landlord said that the tenant was leaving windows unlocked so that his friends could gain access to the unit. In relation to the tenant's use of his sound equipment, the landlord made a number of requests that he cease or use it when she was out of the home.

The parties communicated via email and copies of some of that communication was supplied as evidence. On September 17, 2013 the landlord emailed the tenant and said she did not know who was in his suite while he was at work every day, but noise, loud talking and music was travelling up the heat vents. The landlord said the tenant's guests were using the keyboard at a loud volume at 9 a.m. The tenant emailed and apologized for the noise, he said he now had headphones and would tell his friends to keep the volume down when he was not at home.

On September 20, 2013 the landlord sent the tenant an email at 12:52 p.m. to tell the tenant the music was too loud.

On September 29, 2013 the landlord issued the tenant letter outlining problems with the tenancy. The landlord pointed out that the unit had not been rented out as a sound studio and that the tenant should rent a studio or practice elsewhere if the promised headphones were not going to be used. The landlord said she had been respectful and was asking the tenant, for the 3rd time, to be respectful. The letter also pointed out several issues related to the tenant's occupant, internet usage and smoking.

On October 9, 2013 the landlord issued the tenant another letter which again informed the tenant that he was disturbing the landlord because of the tenant's music. The landlord stated the tenant had not told her he would be bringing in a large assortment of professional sound equipment and that he should have done so. The landlord said she had suggested he use the equipment when the landlord was away overnight and that her attempt to accommodate him had been met with some belligerence. The landlord said the tenant needed to remedy the problem and that the drumming and bass needed to cease. The landlord told the tenant she would be away for several days, so he could use the equipment as long as her neighbours were not disturbed.

On November 7, 2013 the landlord called the police who attended the unit at 1 a.m. The tenant's girlfriend had entered through a window and a fight ensued between the tenant and his girlfriend. On November 7, 2013 the landlord gave the tenant a notice of entry which informed the tenant that any damage found must be completed by a professional; that the deck needed to be cleaned and the landlord's table and chairs should be taken out of the shrubs. The Notice also informed the tenant that it was becoming difficult for the landlord to continue having the tenant remain in the unit and that any repeat of loud music, fighting, loud banging of doors would result in a Notice to end tenancy.

During the November 9, 2013 inspection the landlord took photographs of the unit. There were several holes in walls, a door had a hole in it, a drapery rod had been pulled from the wall and a piece of corner mould was removed. Photographs showed garbage spread on the deck.

With the tenant's permission the landlord entered the suite on November 13, 2013. Some attempt to repair the wall had been made, but there was broken glass on the floor

and the drapes were on the floor; the tenant gave the drapes to the landlord. The rod for the drapes was hanging from the wall.

The landlord asked if she could return on November 17, with her son, to see if repairs were continuing, but was told she had been given her quota of inspections. The tenant told the landlord he may or may not let her know when repairs had been completed. To date the door has not been repaired, the walls have not been painted.

On December 1, 2013 the landlord issued a 1 month Notice ending tenancy; it was altered to give the tenant 2 months to vacate. A letter was attached explaining why the notice was issued; some of which included the repeated playing of loud music, the tenant's attitude that he could pay music and disturb the landlord as he liked; 6 months of garbage not removed from the area of the suite; allowing people to enter the unit through a window and damage to the home.

The landlord said that when the tenant allowed people to enter through windows it placed the landlord's property at risk as anyone could enter at any time.

The tenant confirmed that the noise was caused by a digital drum kit; but that it has a volume control. The tenant had gone to the landlord's living room, so he could hear the sound the system made and he determined it was not loud, but "very light." The tenant said the sound system was not causing an unreasonable amount of noise, that he listens to music for fifteen to twenty minutes each day, never later than 10 p.m. or before 10 a.m. The tenant said that his music system had the same kind of volume control of a CD player or typical stereo and that the landlord could be disturbed by a pin dropping. The tenant did not believe he was breaking any kind of etiquette by bringing in sound equipment.

The tenant said his girlfriend entered the home, uninvited, through the window. The tenant said he never gave people permission to enter through the window. The tenant said he has not invited people to climb through his window and that he told his roommate not to do that. The tenant stated that he cannot help it if people choose to come through his window.

The tenant did not deny that damage occurred as the result of a fight with his girlfriend. He said the corner molding was plastic and had already fallen off; that his father had fixed the holes and that a door was outside of the unit, ready to be installed. During the hearing the landlord went downstairs to see if the door was outside of the unit; it was not. The tenant said he was not calling from the unit and that perhaps the door had been placed inside of the home.

The tenant said that he has been completing the repairs and that it has taken time as he wanted to order a door through a friend's father, who could obtain a discount for the stock door.

The tenant denied that they have not cleaned up garbage and the photographs were of a one-time problem.

The landlord said that the tenant may have used headphones at times, but the bass from the system made the floor vibrate and that this was not reasonable. The landlord did not understand how the tenant found this reasonable and compared it to the sound of her own TV and stereo, which cannot be heard in the lower unit where the tenant resides. The landlord stated the scope of equipment brought into the home was unusual and if she had known he planned on using this type of equipment in her home she would not have rented him the unit. Outside of the written communication the landlord said she had talked to the tenant about the problem on a number of occasions.

The landlord said that she needs the rental income and is not in the habit of evicting tenants. The landlord reached a point where she could no longer live with the disturbances caused and feels that the tenant has been taking advantage of her attempts to be reasonable. The tenant has failed to cooperate and the landlord could not agree to allow the tenancy to continue.

Analysis

The tenant has applied to cancel a Notice ending tenancy for cause issued on December 1, 2013; effective on February 1, 2014. In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral submissions and photographs submitted at the hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Significantly interfered with or unreasonably disturbed the landlord.

In consideration of the reasons given on the Notice ending tenancy, I have placed emphasis on the submission of the landlord that the tenant has unreasonably disturbed her. From the evidence before me and testimony of the parties, I find that the landlord has taken all steps necessary to warn the tenant, to work with the tenant to decrease the disturbances and that the tenant has chosen to largely reject the landlord's attempts.

I do not find it reasonable and realistic for the tenant to expect that he be able to use an electronic drum set and keyboard when living in a lower unit of a home; at least not to the degree that has been set out by the landlord. It is unrealistic for the tenant to believe that his use of sound equipment directly below the landlord would not cause disturbance; particularly given the addendum he signed setting out the expectations governing music and television use in the unit. Further, there was evidence that the tenant's friends were

in the home, in the absence of the tenant, using the sound equipment, resulting in disturbance.

The tenant said that he purchased headphones for the drums, yet the landlord continued to experience disturbance and to warn the tenant. I found the tenant's submission lacked any recognition of the effort the landlord has made to caution the tenant to suggest he could use this equipment when she was out of the home and simply asking him to turn it down. Further, the landlord issued email correspondence and written communication; asking the tenant show respect and that he cease causing the disturbance; yet the problem persisted.

I have rejected the tenant's submission that he has only been playing a "normal" volume of music. While the level of sound could be adjusted, the tenant determined the landlord's requests were not valid.

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I favoured the evidence of the landlord. I found the landlord's testimony consistent and measured. The landlord also gave the tenant multiple warnings. I found the attempts made by the landlord supported her assertion that she did not wish to evict the tenant, but had come to the point where she simply could not tolerate the sound of the tenant's music system any longer.

Therefore, I find that the 1 month Notice ending tenancy issued on December 1, 2013 is of full force and that the tenant's application is dismissed.

During the hearing the landlord said she wants the tenant to move out. Section 55(1) of the Act provides:

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

As the landlord has requested the tenant vacate and give the landlord possession of the unit, I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I have not provided an analysis in relation to the balance of the reasons given on the Notice, as the tenancy is ending based for the reason set out above.

The Act requires a tenant to leave a unit reasonably clean and to repair any damage that has occurred; outside of normal wear and tear.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to an Order of possession.

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 31, 2014

Residential Tenancy Branch

