



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OP

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for cause.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?
Is the landlord entitled to an order of possession?

Background and Evidence

The rental building is a four-plex divided into the following rental units: 6415 Upper, 6415 Lower, 6417 Upper, and 6417 Lower. The tenants in this application occupy 6417 Lower.

A written tenancy agreement was put into evidence which indicates the tenancy started July 1, 2003. At that time, the tenants were obligated to pay \$500.00 rent monthly in advance on the first day of the month.

The landlord gave evidence that she served the tenants with a Notice to End Tenancy for Cause (the "Notice") by personal service on December 31, 2013. The Notice specifies an effective date of January 31, 2014 and specifies the following reason for the Notice:

- 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 gave evidence that in 2005 a previous tenant who occupied 6417 Upper complained to her that the male tenant in this application was extremely volatile and lost his temper quickly. The landlord said she spoke to the tenants of the other three rental units in the building and some of them expressed concern that the male tenant in this application was hostile and verbally aggressive. The landlord said she wrote a letter to all the tenants saying she hoped they could get along in a cooperative spirit.

The landlord gave evidence that during the period from 2005 to 2011, the other tenants tried to ignore the behaviour of the male tenant in this application.

The landlord gave evidence that in September 2011, there was a fire in 6417 Upper that was caused by the son of the tenant in the upstairs rental unit. The landlord said that when she arrived on the scene, one of the firemen told her that she should keep an eye on the male tenant in this application. The landlord says the fireman told her he had had to restrain the male tenant in this application from physically attacking the boy who caused the fire.

The landlord gave evidence that the two upstairs rental units were extensively damaged by the fire and were vacant for a period of time while they were being refurbished. She says she got new tenants for both upstairs rental units in approximately February 2012. She says that shortly afterward, both new tenants reported to her independently that the male tenant in this application was banging on the ceiling whenever they moved or made any noise. She says that sound does travel easily through the building and that is the reason she sets the rent so low.

The landlord provided a copy of an email she received on October 1, 2012 from the tenant who was then occupying 6417 Upper. That email reads in part:

... We have had a couple of disconcerting interactions with the male tenant below us. I believe it was last June when my son [Name] was bouncing a ball in the study for about three minutes. As soon as I noticed he was doing it I got him to stop. But then the tenant downstairs started about a fifteen minute tirade of yelling at us up through the floor about how noisy we are. He also said things like "Don't pretend you aren't home" and "I know you are there". The yelling was very aggressive and made both me and my children feel a bit scared. So much so that I took them up to the top floor into my bedroom and closed the door so we could not hear the yelling anymore.

There have been at least three incidents where my daughter has been practicing the piano (not late at night or early in the morning) when they use a broom stick or something to bang on the ceiling to get her to stop. ...”

The landlord provided two signed statements from the tenants in 6415 Upper, which is upstairs on the other side of the duplex from the tenants in this application. The signed statement from the female tenant in 6415 Upper reads in part:

“On November 21, I rounded the back corner with my children, and a friend of my 5-year old daughters, who were coming home from school to have a play date. I automatically greeted [male tenant in this application] with a pleasant hello, which then launched him into a completely out of control rampage about how I’ve been spreading rumors about him. It was utterly alarming to us all that [male tenant in this application] began yelling about how the “neighborhood has gone to shit since we moved in” in front of 3 young children. [Male tenant in this application] was yelling at us so loudly that the tenant in [another rental unit] came out to see what the trouble was .. While trying to ignore his outburst, I simply ushered the kids inside and tried to carry on with a normal play date. ...”

The landlord gave evidence that she had observed the children of the tenants in the other upstairs rental unit appear to be afraid of the male tenant in this application.

The landlord provided a copy of a signed statement dated January 11, 2014 from the tenant in 6415 Lower. The statement reads in part:

“I have been outside on several occasions when [male tenant in this application] was yelling at [female tenant in 6415 Upper] and the children accusing them of spying and that the neighborhood went down hill since they moved in. This is when [female tenant in other upstairs unit] is just coming home from picking up the children from school. [Female tenant in 6415 Upper] was trying to calm him down because he was upsetting the children and [male tenant in this application] just got louder and then went inside his apartment slamming the door behind him. ...”

The landlord provided a copy of a signed statement from the tenants who currently live in 6417 Upper. The statement reads in part:

“To begin, two incidents that are more clear disturbances:

1) While home from work one weekday I, [Name], overheard [male tenant in this application] yelling in the back area of the duplex. I did not hear any precursor to a sudden explosion of angry yelling, so I didn't know what had transpired (although I was in the same area of the house that overlooks the back area the whole time). All of a sudden I heard [male tenant in this application]'s door open and although I don't recall the exact words, it ended with a repeated shouting of "Get your Mom right now! I want to talk to your Mom right now!" It wasn't the choice of words that was distressing; it was the irate tone and volume. I assumed the incident was something serious, so when I later learned it was in response to stones being thrown at his door, I felt very unsettled. Irritation to having a nuisance at your door is understandable, but the response was extreme."

2) One afternoon when I, [Name], was playing guitar, I noticed a pounding noise coming up from [tenants in this application]'s apartment. I assumed at the time they were hanging pictures or something and had to hammer on the wall. A few weeks later, after being given their eviction notice, [male tenant in this application] believed perhaps this incident was the reason they were being evicted, so he came to our door to apologise for the pounding as well as the yelling and swearing at me. We are both even more uncomfortable knowing that that was his first response to having an issue with us. ..."

The tenants provided a signed statement prior to the hearing. The tenants agree there have been incidents between the male tenant and the tenants in 6415 Upper. The tenants say that the son of the tenants in 6415 Upper in one incident was shooting rocks at the tenants' door with a hockey stick and in a second incident two months later was throwing rocks at the tenants' door. The tenants' evidence is that there was a third incident about a week after the second, where the son on the tenants in 6415 Upper was riding a scooter in the tenants' carport. The male tenant says he had an exchange with the female tenant in 6415 Upper at that time in which he raised his voice but he did so out of a sense of frustration with the recurring events.

The tenants' statement indicates there was a fourth incident in which the female tenant in 6415 Upper said hello to the male tenant in this application who responded by saying "I'm not saying hello to you because you are telling the neighbours what terrible people we are." The male tenant does not indicate he raised his voice in that exchange.

The tenants' statement describes a fourth incident in which the male tenant in this application observed the male tenant in 6415 Upper staring at him while the male tenant in this application warmed up his car. The male tenant in this application says he gave

the male tenant in 6415 Upper “the finger” before he drove away. The tenant submits that making such a gesture does not constitute an unreasonable disturbance.

The male tenant in this application denies he was physically aggressive in 2011 toward the boy who started the fire in 6417 Upper. He notes the landlord did not raise that allegation in her evidentiary package prior to the hearing.

Regarding the statement from the current tenants in 6415 Upper, the tenant notes that while the tenants in 6415 Upper contacted the police three times regarding their interactions, the police never spoke to him. Regarding the incident where the female tenant in 6415 Upper introduced herself to him, he agrees that he told her about problems with past tenants but denies he was “irate”.

Regarding the incident where the son of the tenants in 6415 was throwing rocks at his door, he denies that he was “yelling and screaming”.

Further, the tenant disputes the characterization of the November 21st incident described by the female tenant in 6415 Upper. Specifically, he denies that he made a statement about the neighbourhood “going to shit” and he denies that he had an “out of control rampage.”

Regarding the statement from the former tenant of 6417 Upper about the ball-bouncing incident, the tenant agrees he responded by yelling through the floor. He states that he should have knocked on their door instead. His evidence is that he and his partner were bothered by their neighbours playing the piano for four hours a day. He denies that he used a broomstick to hit the ceiling, but admits he did punch the wall on one occasion. He also admits that he yelled when the piano-playing occurred once at 8 a.m. and another time at 9 p.m.

The landlord requests an order of possession; however she agrees that the tenants may remain in the rental unit until 1 p.m. on March 31, 2014.

Analysis

Where a landlord seeks to end a tenancy for cause and the tenants dispute the notice to end tenancy for cause, the onus is on the landlord to prove cause on a balance of probabilities.

In this case, I find that the landlord has proven the cause “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed

another occupant or the landlord” on a balance of probabilities for the following reasons. The landlord has provided evidence from several other tenants in three other rental units wherein the other tenants describe the male tenant’s behaviour in terms such as “out of control rampage”, “tirade of yelling”, and “explosion of angry yelling”. Each of the foregoing descriptions of the tenant’s behaviour came from different witnesses and describes different incidents. In other words, three separate witnesses describe the tenant’s behaviour in similar terms. I conclude that the foregoing descriptions are accurate descriptions of behaviour exhibited by the male tenant.

Further, I find that the male tenant’s behaviour (as described by witnesses) constitutes significant interference with and unreasonable disturbance of other occupants within the meaning of Section 47. I include the occupants of all three adjoining rental units, including those rental units which have a separate street address, as “occupants” within the meaning of Section 47. For those reasons, I find the landlord has established cause to end the tenancy and I dismiss the tenants’ application to cancel the Notice.

Since the Notice is not cancelled, the landlord is entitled to an order of possession.

Conclusion

The tenants’ application is dismissed. I grant the landlord an order of possession effective at 1 p.m. on March 31, 2014.

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: March 04, 2014

Residential Tenancy Branch

