



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stewart Vernon Ventures Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – OPC, MNR, MNDC, FF, O

For the tenant – MT, CNC

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord withdrew his application for a Monetary Order for unpaid rent or utilities and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and to cancel the One Month Notice to End Tenancy.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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 tenant testifies that she did not pick up the landlords registered mail package. The tenant is still considered to have been served these documents five days after they were sent pursuant to s. 90 of the Act. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

- Is the tenant entitled to more time to file an application to cancel the Notice to End Tenancy?
- If so is the tenant entitled to have the Notice to End Tenancy cancelled?

Background and Evidence

The parties agree that this tenancy started on September 01, 2013 for a month to month tenancy. Rent for this unit is \$595.00 per month and is due on the 1st day of each month. The tenant paid a security deposit of \$297.50 at the start of the tenancy.

The landlord testifies that the landlord has received numerous complaints about the tenant from another tenant residing in the unit below. The lower tenant has complained about noise from the tenant's music, from her TV and from guests coming and going and closing the door noisily. The lower tenant has informed the landlord that this noise happens late at night and in the early hours of the morning and this disturbs the lower tenants sleep. The landlord testifies that he asked the lower tenant to call the police and report this if it happened again as the landlord was also then being disturbed by the lower tenants phone calls late at night.

The landlord testifies that he has been to the unit on one occasion in the day time and the tenant's music was so loud the tenant could not hear the landlord knocking on her door three times. Eventually the tenant did turn her music down but would not open the door. The landlord testifies that he has spoken to the tenant about the late night noise but after that the tenant stopped taking the landlords calls. The landlord testifies when he did call the tenant, the lower tenant reported that the tenant did then turn down the music or TV.

The landlord testifies that he has sent the tenant two breach warning letters concerning the noise on November 08, 2013 and December 11, 2013. The landlord testifies that he continued to receive complaints from the lower tenant so having advised this tenant to lower the noise and if she did not comply it could be grounds for an eviction, the landlord decided to issue the tenant with a One Month Notice to End Tenancy. This Notice was served upon the tenant on January 19, 2014 and has an effective date of February 28, 2014. The Notice informed the tenant that the reason for the Notice was that the tenant or a person permitted on the property by the tenant has significantly disturbed another tenant or the landlord. The landlord testifies that since the

Notice was served upon the tenant the landlord has continued to receive noise complaints about the tenant. The landlord refers to the lower tenants complaints about the tenant smoking marijuana in front of young children while sitting on the laundry steps. The landlord has submitted copies of the compliant letter and subsequent breach letters in evidence.

The landlord testifies that he is willing to extend the effective date of the Notice to April 30, 2014 and seeks an Order of Possession for that date.

The tenant disputes the landlords claim. The tenant testifies that she found the Notice on her door on January 20, 2014. The tenant testifies that she filed her application to dispute the Notice on January 30, 2014. However the tenant testifies that as she did not have a phone at that time she requested at the office where she filed her application that they let her know in writing when she should return to pick up her hearing papers. The tenant testifies that no one contacted the tenant so she returned to the office and had to submit a new application on February 11, 2014. This was then amended on February 17, 2014. The tenant has provided copies of these applications in evidence.

The tenant disputes the reason given on the Notice and testifies that she does play her music loudly but never late at night. The tenant testifies that she plays it loudly in the day when the lower tenant is out. The tenant testifies that the lower tenant has parties and plays his music loud so the tenant has turned her music up at that time. Then the lower tenant's party ends, he then complains that the tenant's music is too loud. The tenant disputes that she has company coming and going late at night. The tenant testifies that the lower tenant has complained that she walks too loudly in her unit. The tenant agrees that the police have been out to talk to the tenant once about turning her TV down. The tenant testifies that the TV was not on loud but the police said it should not be on late at night.

The tenant disputes the lower tenants claims that she has smoked marijuana on the laundry steps but does agree that she does smoke marijuana and cigarettes in her unit even though she knows it is a non smoking unit.

The landlord disputes the tenant's testimony. The landlord testifies that this tenant has never raised any complaints about the lower tenant. The lower tenant has however complained

numerous times late at night about the noise from this tenants unit which disturbs his sleep. The landlord agrees this is a non smoking unit and the tenant should not be smoking marijuana or cigarettes in her unit.

Analysis

The landlord served the tenant with a One Month Notice to End Tenancy on January 19, 2014 by posting it to the door. The Notice is therefore deemed to have been served three days later although the tenant agrees she received it on January 20, 2014. The tenant had 10 days to file an application to dispute the Notice. I am satisfied that the tenant did file her first application on the 10th day even though this application was terminated at the office; and the tenant was then required to file a new Application. I will accept that the first application was filed on time. Consequently the tenant does not require more time to file the application to cancel the Notice.

With regards to the landlords application for an Order of Possession based on the reason given on the Notice; 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. I am satisfied from the corroborating evidence before me from the landlord that the lower tenant has been significantly disturbed by this tenant. The landlord has submitted a signed letter of complaint from the lower tenant which also contained two separate police file numbers showing the lower tenant had to call the police out on two occasions due to noise. I further find the landlord sent two breach letters to the tenant in 2013 concerning the noise. The tenant would have been duly notified that there were noise complaints against her and that if they continued the tenants tenancy would have been in jeopardy.

I am satisfied from the landlord's evidence and testimony that the noise did continue which resulted in the tenant being served the One Month Notice. It is therefore my decision that the reason given on the One Month Notice is upheld and the landlord's application for an Order of Possession is granted. Consequently the tenant's application to cancel the Notice is dismissed.

Conclusion

For the reasons set out above I HEREBY ISSUE an Order of Possession in favour of the landlord effective on April 30, 2014. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$297.50 leaving a balance \$247.50 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

The tenant's application is dismissed in its entirety without leave to reapply

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: April 02, 2014

Residential Tenancy Branch

