



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice to end tenancy for cause (the “notice”) issued on May 16, 2014, for money owed or compensation for damage or loss under the Act, to have the landlord comply with the Act, regulations, or tenancy agreement and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy. The balance of the tenant’s applications is dismissed, with leave to re-apply.

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.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. **I refer only to the relevant facts and issues in this decision.**

Issues to be Decided

Should the notice to end tenancy issued on May 16, 2014, be cancelled?

Background and Evidence

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2014.

The reason stated in the notice to end tenancy was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and

The landlord testified that the premises is a multi-unit residence and shortly after the tenant moved into the rental premises they would be unreasonably disturbed by the tenant due to excessive noise disturbance, which included groaning, moaning and followed by explicit loud foul language. The landlord stated this noise would occur more than three times per week and on one particular day it occurred at three different times throughout the day.

The landlord testified that on April 7, 2014, she asked her boyfriend to give the tenant a warning letter as the subject was very sensitive and felt it was best for the two men to discuss this issue in private. The landlord stated after the initial conversation that the excessive noise stopped for about one week. However, as soon as her boyfriend returned to his home country the excessive noise began again.

The landlord testified that on May 7, 2014, she provided the tenant with a final written warning that if the excessive noise disturbance continued she would have no other option except to end the tenancy. The landlord stated that the tenant ignored her letter and the noise has continued and as a result she issued the notice to end the tenancy on May 16, 2014.

The landlord testified that because of the excessive noise and the content of the explicit language used during the noise disturbance her son will no longer allow her grandchildren to attend the multi-unit premise.

The landlord testified that these noise disturbances have been heard by her guests and by the neighbours. Filed in evidence is a letter from MK, date April 20, 2014, which supports the landlord position of hearing excessive noise that could be heard over and above the volume of the radio and was disturbing in content. Filed in evidence is a letter from DH, dated June 18, 2014, which supports the landlord's position of excessive noise disturbance, which he heard personally and which he could overhear through and internet telephone service provider when speaking to the landlord over the internet from his home country. Filed in evidence is a letter from MF, dated June 18, 2014, which support the excessive noise can be heard by neighbours in the neighboring property.

The tenant testified that he feels that he is being harassed as the landlord does not approve of his lifestyle and that any sound the landlord is hearing are at a normal

conversational level and not an unreasonable disturbance. The tenant stated that the rental premise is lacking sound-proofing which the landlord is required to repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case, the tenant had been warned by the landlord on April 2, 2014, that they were being unreasonably disturbed by the tenant's excessive noise and excessive explicit foul language. The documentary evidence of DH, supports that during his conversation with the tenant regarding the noise disturbances, the tenant apologized. The evidence of the landlord was that the noise disturbance was temporarily rectified for a period of approximately one week.

On May 7, 2014, the tenant received a second warning. That warning was ignored by tenant and the excessive noise and explicit language continued to unreasonably disturb the landlord.

While the tenant claims that any noise the landlord is hearing is at a conversational level, I find that is not supported by the witness statements, as the witnesses have heard the noise disturbances and explicit language, in person, and the noise disturbance could be heard, over and above the volume of a radio, over and above the volume of an internet conversation and by an individual in the neighboring property. I find on the balance of probability that the tenant has unreasonably disturbed the landlord.

When parties live in a multi-unit residence all residents have a duty not to unreasonably disturb another occupant or the landlord.

Therefore, I find the notice to end tenancy issued by the landlord on May 16, 2014, is a valid notice and as a result the tenancy legally ended on June 30, 2014. Therefore I dismiss the tenant's application to cancel the notice to end tenancy. The tenant is not entitled to recover the cost of the filing fee from the landlord.

As the tenant's application is dismissed and the landlord has continued throughout the hearing asking to end the tenancy as soon as possible, I accept that request as a verbal request for an order of possession, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states: Order of possession for the landlord

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.

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court. This order must be served on the tenant and may be filed in the Supreme Court

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: July 04, 2014

Residential Tenancy Branch

