



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boundary Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end tenancy for cause.

Both tenants attended the hearing, assisted by an advocate, and the tenants called one witness. An agent for the landlord company also attended, who also called one witness. One of the tenants, the landlord's agent and the witnesses each gave affirmed testimony and the parties were given the opportunity to cross examine each other and the witnesses on the testimony and evidentiary material provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled for the cause set out in the notice?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$850.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$425.00 which is still held in trust by the landlord. The rental unit is an apartment in a complex which contains 188 units.

The landlord's agent further testified that there have been serious complaints by other tenants in the complex that have resulted in multiple verbal warnings and 2 breach letters to the tenants. The complaints include guests of the tenants waiting at the outer

door of the rental complex for other tenants to open it and then following them in without being buzzed in by the tenants. The guests have also been aggressive when doing so.

The landlord has provided a copy of a letter dated July 11, 2013 from the landlord to the tenants marked "Breach Letter," which states that the tenants' conduct is affecting the safety, welfare, and comfort of the other tenants in the building. It appears to be a form letter and continues to state: "As tenants you or your guests shall not disturb, harass, or annoy occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time, and shall maintain quiet between 11:00 pm and 9:00 am.

"Any misconduct such as the above made after July 11, 2013 will be considered a breach of your Tenancy Agreement. Therefore, this will result in a one (1) month Notice to End a Residential Tenancy pursuant to Section 36(2)(a) and/or (h) of the Residential Tenancy Act."

The landlord's agent testified that this particular letter was issued as a result of an on-going dispute between the tenant and another tenant in a rental unit below who complained on this occasion of the tenants pounding on the floor. The tenants also gave the landlord a complaint about that tenant for loud music, and tenants in both rental units received a breach letter.

Another breach letter in identical typed wording has also been provided, but is dated November 26, 2013 and states that further disturbances after that date will be considered to be a breach of the tenancy agreement. The landlord's agent testified that other occupants of the rental complex had complained that the tenant has been out at night calling for her cat, which has been an on-going problem. The breach letter was issued after another complaint of the evening before November 26, 2013.

Since the breach letters were issued there have also been verbal warnings, but the landlord's agent does not recall the dates or any specifics.

On May 30, 2014 the landlord's agent served the tenants with a 1 Month Notice to End Tenancy for Cause by personally handing it to one of the tenants. A copy of the notice has been provided and it is dated May 30, 2014 and contains an expected date of vacancy of June 30, 2014. The reason for issuing the notice states:

- 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's witness testified that he and his wife contract the property management as partners, and he has given the tenants plenty of verbal warnings. He walks around the complex a lot cleaning and looking after things, and it's a big building. He has seen friends of the tenants in the building who have told the witness that they were looking for the tenants' suite. On 4 occasions he has escorted them to the tenants' rental unit and has told the tenants that they can't allow that and must use the buzzer. The witness is now aware that the tenants' buzzer isn't working, and the landlord is taking steps to correct that, but all tenants were told to let the landlord know if buzzers fail, and the tenants have only recently done that.

He also testified that another tenant has complained that the tenant has been out late at night calling her cat.

The tenant testified that no letters of complaint other than the 2 breach letters described by the landlord's agent have been received. The tenant has called for her cat because there are coyotes in the neighbourhood. The tenant disagrees that either tenant is aggressive; they are both slight people and not intimidating. The tenants have also provided letters of support from acquaintances.

When asked if the tenant has been warned about leaving the door open while looking for her cat, the tenant replied that she has not done so. Her home was previously broken into and she's careful about leaving doors open.

The tenants' witness testified that he is an outreach worker and has known the tenants for over a year and has been working with them. The witness has read the letters of support provided by the tenants and completely agrees with the contents.

The witness also described a situation wherein the witness was with one of the tenants in the hall of the rental complex when another tenant (a neighbour) followed them around talking about a disagreement. The tenant said he didn't want to talk about it at that time but the neighbour continued to follow them and prevented the tenant from getting into the witness' vehicle. The neighbour became threatening with his gestures and language, and the witness felt there was a risk of physical confrontation and got between the parties. The neighbour continued to follow them and they got in the car and drove away. The neighbour was the aggressor, not the tenant.

He also testified that from his experiences with the tenants over the last year, which have varied from 5 minutes to all day on an average of 2 or 3 times per week, the

tenants have not shown any physical or verbal aggression, and avoid conflict at all costs.

Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove the validity of the notice, which may include the reasons for issuing it.

I have reviewed the notice to end tenancy and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

The landlord's agent and witness have both described scenarios where friends of the tenants have followed other tenants into the building and the witness testified that the tenants were told on 4 occasions that they must be let in by the tenants. Although I accept that, I have also heard testimony that the buzzer isn't working. There is no evidence before me about when the buzzer was reported as not working or when it stopped working. Also, there is no evidence before me that the tenants are responsible for the buzzer other than to report it not working, and I cannot find that the tenants are responsible for a breach when the landlord has not established that the tenants had any other means of knowing when their guests had arrived.

I have also considered the testimony of the landlord's agent and witness wherein they describe the tenant calling for her cat late at night, and the breach letters themselves. The breach letters don't contain any details of a breach. The tenant denied being warned about leaving a door open while looking for her cat, and I am not satisfied that the landlord has established cause to issue the notice.

I find that the landlord has failed to establish a significant interference or unreasonable disturbance by the tenants or their guests, and I cancel the notice to end tenancy.

I have also reviewed the 2 of 4 pages provided of the tenancy agreement and find that the hours of quiet time agreed to by the parties is between 11:00 pm and 9:00 am. The *Residential Tenancy Act* also allows me to make any orders necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or tenant comply with the *Act*, the regulations or a tenancy agreement. I order the tenants to comply with the tenancy agreement by observing those hours, which includes calling a pet after 11:00 pm.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled and the tenancy continues.

I hereby order the tenants to comply with the tenancy agreement by observing and maintaining quiet between the hours of 11:00 p.m. and 9:00 a.m.

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 24, 2014

Residential Tenancy Branch

