



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC O RR FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel the Notice to End Tenancy for Cause; and
- b) Compensation for the withdrawal of her cable service for three days contrary to section 27.

SERVICE

The Notice to End Tenancy is dated August 1, 2014 to be effective September 3, 2014. The effective date on the Notice is automatically corrected to September 30, 2014 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. I find it was served by posting it on the door and I find that the landlord was served with the Application for Dispute Resolution hearing package by registered mail. He stated they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end the tenancy or is the tenant entitled to relief?

Is the tenant entitled to compensation for having her cable cut off for 3 days?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in May 2014, rent is \$720 a month including basic cable and a security deposit of \$360 was paid. This is an older, wooden apartment building and the parties agree that noise may be transmitted easily. The landlord said he had complaints from early in the tenancy about noise from this tenant's unit; he had hoped to change the situation by giving a warning and a Notice to End Tenancy for unreasonable disturbance of the peaceful enjoyment of other tenants but the problems have persisted. He noted he

bought the building in 2001 and has had the same managers since then. He said he has mostly long term tenants (average 11 years) and has never had to deal with this before; he corrected himself to say he had served one Notice before but the couple (who are witnesses for the tenant in this hearing) had corrected the problem.

He provided a letter of complaint signed by six tenants. It notes July 26: 11:00 p.m. - 3:45a.m. the tenant on balcony talking loudly on her phone; July 27: 2a.m -4a.m. tenant and guests disturbing with loud conversation, slamming doors, heavy footsteps back and forth from apartment to balcony; (July 30- Caution posted on tenant's door); July 31: 7p.m.- 5:30a.m.- 7 a.m. tenant and guests in loud conversation, loud music, slamming doors, heavy footsteps. The landlord notes that although the tenant states one or other of the complainants may have their own issues, he has numerous tenants all complaining of her guests or her behaviour or noise. One tenant wrote an individual email complaining of being constantly awakened by the tenant talking loudly on her balcony on July 28, 2014.

The tenant and her witness stated that she had attended a party with the witness in another location on July 26 and not come home until the early hours of the morning. A letter from a witness noted they did not get back until after 4 a.m. from the party. She noted that there are trucks and traffic below their building so it is noisy. She said that one of the signatories to the complaint was a tenant who lived below her and she had approached the woman who said there were no problems. She wrote a statement concerning the male next door and his possible use of the telephone on the balcony or a possible issue with her over her refusing to allow him to use her Wi-Fi connection. She also complained of the management banging on her window or door and accused the male manager witness of screaming at her (which he denied).

The male manager gave witness of the numerous complaints he has had. He said that he and his wife can hear the tenant loudly talking on a mobile phone on her balcony and it disturbs them also. One of the other signatories and his wife went to the suite below the tenants and listened after a complaint and he said there was significant noise of loud conversation. He said his wife listened at her door to verify the validity of a complaint and she heard very loud talking from within. He pointed to the tenant's complaint in her written statement about his wife speaking to them from the fire escape and yelling at them on July 6, 2014 about noise issues as evidence that the tenant has been aware of the problem for some time. In the tenant's written statement, she notes that the female manager knocked on her door one time at 10:30p.m. to discuss noise issues with her and ask her questions. The tenant in this statement also makes negative comments about problems with the managers, the neighbour handyman and repeats some gossip; she also wrote an email to the female manager titled 'Name

....do not ever' in which she comments on the manager's banging on her door on July 6 as a result of a noise complaint the previous night.

The tenant also claims \$140 for the loss of use of her cable for 3 days. The landlord said that the service provider was going digital and channels were changing. The tenant complained of this and the cost of getting a digital box. He said the lease provides for basic cable so he offered to withdraw the service and reduce the tenant's rent by this amount and she accepted. The Notice of Termination/Restriction is in evidence and the tenant's acceptance letter also. She chose to have the cable provider install her service on August 1, 2014 and her rent was reduced accordingly. While the service provider was handling this, her basic service was cut off by the provider.

An attempt at mediation between the parties was unsuccessful.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

Section 47 of the Act provides that a landlord may serve a one month Notice to End Tenancy for cause if a tenant is significantly interfering with and significantly disturbing the peaceful enjoyment of other tenants and the landlord. In this case the landlord has satisfied the onus. I find the weight of the evidence is that this tenant and/or her guests have talked loudly in the unit or on the balcony in the late evening and early morning which has significantly disturbed the peaceful enjoyment of other tenants in the building. Although I find this is an older building which may have poor noise isolation, this does not alter the other tenants' rights to peaceful enjoyment. I place significant weight on the landlord's sworn evidence that most of these tenants are long term tenants and he has only had to deal with one complaint (which was corrected) since he bought the building in 2001. Six tenants signed the complaint letter and the manager who also lives in the building testified to the noise problem and some other issues.

Although the tenant and her witnesses contended she was not home on July 26, the date of one allegation, I find even if this date is ignored, the evidence states she returned in the early hours of the next morning from a party (27th); I find it probable that

the landlord's witnesses thought of this as the continuation of the previous day. I also find that the couple across the hall were the persons who were issued the one Notice to which the landlord referred and they are friends who sometimes party with her; her girlfriend witness is also a friend and her noisy behaviour with the tenant has been the source of some complaints. These facts affect the weight of their evidence. Although the tenant contended she received only one notice to correct her behaviour late in July, I find section 47 of the Act does not require the landlord to give the tenant notice to correct disturbing behaviour other than the one month Notice to End Tenancy. I also find she had been cautioned verbally by the managers on some occasions.

I find also her written statements and letters to the landlord and managers indicate she has serious issues with some of the other tenants and the management which has caused some strife in the building and disturbs the landlord. I dismiss her Application to cancel the Notice to End Tenancy for cause. The tenancy is ended and a Notice of Possession is issued to the landlord as requested. Unfortunately the parties were unable to negotiate a move-out date so it is effective two days from service.

In respect to compensation for cutting off the cable, I find the landlord after her complaints regarding the changing of channels by the service provider and digital boxes, offered to terminate the service and reduce her rent in accordance with section 27 of the Act. The tenant accepted this and requested it commence August 1, 2014 as she was having the service provider come at the end of July 2014. As the termination of service was at her own request, I find she is not entitled to further compensation other than the reduction of rent legally offered by the landlord.

Conclusion:

I dismiss the Application of the tenant in its entirety. No filing fee was involved. Pursuant to section 55 and the request of the landlord, I find the landlord entitled to an Order of Possession effective two days from service.

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: October 02, 2014

