



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

At the hearing, the tenant asked that I not accept the landlord's evidence which she received the night before the hearing. When I asked the landlord why he had not given the evidence to the tenant earlier, he explained that he had received the tenant's evidence on October 24 and responded to it 2 days later, sending it via registered mail. The tenant testified that if she had received the landlord's evidence earlier, she would have responded to it by obtaining witness statements. I determined that the reason the landlord delayed sending his evidence was because the tenant had not provided her evidence to the landlord in time for him to respond well before the hearing and I determined that the prejudice to the landlord in excluding his evidence exceeded the prejudice to the tenant in accepting it. I have considered the landlord's evidence in my deliberations.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that the tenancy began in November 2012 and that the rental unit is a bedroom on the main level of a residential property in which the tenant shares a bathroom, kitchen and living area with 3 other tenants. They further agreed that on September 6, 2014, the landlord served on the tenant a one month notice to end tenancy for cause, alleging that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that he lives on the floor below the tenant and that during 2014, the tenant has disturbed other occupants of the main floor so much that several have ended their tenancies because of her. He testified that the tenant has also disturbed him and that she takes showers in the middle of the night, which prevents him and other tenants from sleeping. The landlord testified that in May 2014, another occupant advised that they were leaving because of the tenant and that when he attempted to re-rent this occupant's room and show it to other prospective tenants, he left the prospective tenants in the hallway at one point and returned to hear the other occupants speaking about how problematic the tenant was which dissuaded the prospective tenants from renting the unit.

The landlord testified that late at night the tenant frequently speaks loudly on the telephone and to others who are in the residential property which disturbs the sleep of other tenants. He further testified that the tenant failed to adequately clean up after herself in the common areas of the unit. The landlord stated that he has not received complaints about any of the other occupants in the residential property. On one occasion, the landlord found a frying pan burning in the kitchen and producing black smoke. The tenant returned to the kitchen and acknowledged that she was the person who left the pan on the stove but did not explain why.

The landlord provided a copy of a document entitled "Tenant House Maintenance Agreement" which sets out the tenant's responsibilities to clean the unit. This agreement was signed by the parties in June 2014, almost 2 years after the tenancy began. The tenant testified that she did not want to sign the agreement at first but the landlord persisted in requesting that she sign and eventually she agreed.

The landlord called a witness, J.S., who lived in the residential property for one week, occupying a separate bedroom but sharing common areas with the tenant. J.S. testified that on one occasion, he was disturbed by a loud argument that the tenant had and that she frequently took showers late at night. On one occasion, the tenant and a guest were making noise and J.S. asked her to keep the noise down, to which she responded by simply shutting the door to muffle the sound. The tenant asked J.S. how he knew it was her taking showers late at night and suggested that it could have been any of the other tenants. J.S. answered that he heard whoever was taking the showers walk from the bathroom to the tenant's bedroom, which is beside the kitchen. The tenant claimed that when J.S. asked her to keep the noise down, her response was reasonable as she believed closing the door would prevent J.S. from hearing any noise. J.S. testified that he left the rental unit because of the noise and he didn't believe the environment was conducive to his studies.

The tenant denied having disturbed other tenants and stated that she only saw J.S. a few times during his tenancy and that she was unaware that he had believed her to be too noisy. The tenant did not believe that she had ever disturbed the other occupant who the landlord alleged moved out because of her. She testified that the only issues of which she was aware were problems with tenants failing to clean up after themselves.

Analysis

The landlord bears the burden of proving that he has grounds to end the tenancy. The grounds alleged by the landlord are that the tenant has *significantly* interfered with or *unreasonably* disturbed other occupants or the landlord. Interferences or disturbances of a minor nature are not sufficient to form grounds to end a tenancy.

I am not satisfied that the noise issues alleged by the landlord can be characterized as significant or unreasonable. The fact that the residential property is shared accommodation means that occupants must be prepared to live with more noise than they would if they were in separate apartments or single family dwellings. The tenancy agreement does not prohibit showering at certain times and I am not satisfied that the mere act of running water amounts to a significant or unreasonable disturbance. It is difficult to determine whether the tenant spoke too loudly with other tenants or guests on occasion and while it would be courteous for the tenant to keep the volume of her conversations to a minimum, I expect that occupants of the building will on occasion have conversations with others during the night. As I am unable on the evidence to determine whether the tenant was indeed too loud or whether the complainants were simply annoyed that any conversation was occurring at night, I am not persuaded that this disturbance is unreasonable.

As for the Tenant House Maintenance Agreement, I am not persuaded that this agreement is enforceable. There are a number of elements which must be present in order to make a contract enforceable, one of which is consideration. Each of the parties must give the other party something of value and receive something of value in order for a contract to be enforceable. In the case of this agreement, the landlord benefits from the agreement because the tenants are cleaning the rental unit, but I am not satisfied that the tenant received anything of value from the landlord. I find that there was no consideration given by the landlord in exchange for the tenant's agreement to comply with the maintenance agreement and for that reason, I find the maintenance agreement to be unenforceable as against the tenant.

The landlord alleging that the tenant left the rental unit unclean. In shared accommodation and in the absence of an agreement specifying the cleaning required, tenants are responsible to clean up after themselves, leaving common areas reasonably

clean. The landlord provided no photographs which would have permitted me to assess whether the tenant was leaving the unit unclean but merely offered his opinion. I am not satisfied that the tenant has left the unit unreasonably unclean.

I find that the landlord has failed to prove that the tenant significantly interfered with or unreasonably disturbed other occupants or the landlord and I order that the notice to end tenancy be set aside and of no force or effect. As a result, the tenancy will continue.

I note that the landlord gave testimony about events which occurred after he served the notice to end tenancy. I have not considered any of these events in my deliberations as the events or behaviours giving rise to the issuance of the notice must have occurred prior to the time the tenant received the notice.

Conclusion

The notice to end tenancy is set aside.

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: November 07, 2014

Residential Tenancy Branch

