



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Salmo Seniors Citizens Housing Society
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 tenant for an order cancelling a notice to end tenancy for cause.

The tenant and an agent for the landlord society attended the hearing, and the landlord's agent called 2 witnesses. The parties and the witnesses each gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony 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

Has the landlord established that the notice to end tenancy was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on April 15, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$303.00 per month is payable at the end of each month for the following month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$129.00 which is still held in trust by the landlord. The rental unit is an apartment in a seniors' complex which contains 24 rental units.

The landlord's agent further testified that in the afternoon of June 24, 2014 a neighbouring tenant asked the landlord's agent to attend at the rental unit because the tenant's vacuum was running and so was the shower and both had been running for a very long time. The neighbouring tenant knocked on the tenant's door but there was no answer. The landlord's agent did not have a phone number for the tenant, and another neighbouring tenant went in and returned saying that the tenant just wanted to piss off another tenant in the complex.

The landlord's agent lives on the ground floor in the complex and received another neighbouring tenant at her door crying and stating that there was some terrible pounding from the unit above. The landlord's agent told the neighbouring tenant to call the police, and that the landlord's agent couldn't get involved; it wasn't her job. The police attended and the landlord's agent went with the officer to the rental unit. The officer knocked loudly on the door, and the tenant was inside yelling profanities. The landlord's witness went to the kitchen window of the rental unit and could see the tenant drinking out of a glass and the landlord's agent pounded on the window. The tenant then opened the door, the officer went in and the landlord's agent waited on the landing outside. The landlord's agent heard a loud discussion, and the officer told the landlord's agent that the tenant had just poured another drink and that if police were called again, the tenant would be arrested. This occurred at about 12:30 at night.

The neighbouring tenant returned to the landlord's agent complaining about the tenant again, and again was told to call police. The two went into the ally and another neighbouring tenant joined them to find out what all the commotion was about, which carried on until about 2:30 a.m., but the landlord's witness does not believe the police returned.

The president of the board of directors of the landlord society tried to work things out between the tenants, then due to vacations the board finally made a decision to issue a notice to the tenant ending the tenancy. In the meantime, continuing noise, loud music and pounding complaints were received from other tenants for the whole 2 month period. The landlords issued a 1 Month Notice to End Tenancy for Cause and have provided a copy for this hearing. The notice is dated August 26, 2014 and contains an expected date of vacancy of September 30, 2014. The landlord's agent testified that the notice was personally served on the tenant on August 26, 2014. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.

The landlord has also provided photographs of feces and the landlord's agent testified that they were taken on August 22, 2014 showing it on the wall and on the ground under the tenant's balcony. It was not there until after the police were called and the tenant's continuing complaints about the neighbour's music. Also, letters written by other tenants between June 24 and August 26, 2014 complaining about noises from the tenant's rental unit were sent to the president without prompting.

The landlord's agent further testified that the tenant had also complained about loud music after 9:00 p.m. and that neighbouring tenant was told of the complaint and turned down the music.

The landlord's first witness testified that she is the president of the board of directors and the landlord's agent is the on-site manager. She further testified that there have been ongoing complaints by the tenant about a neighbour's alarm, ceiling fan, stereo and air conditioning.

The witness further testified that one evening in June, 2014 at 11:30 p.m. the witness was advised that the police had been called to the rental complex, and the witness attended. She could hear the tenant banging on the floor and a neighbouring tenant was up as well, and the noise could be heard in another unit. The witness went to the police and the officer told the witness to evict the tenant.

The witness also testified that the landlord's agents have tried to settle the noise complaints, however the witness saw the feces on the wall and under the tenant's balcony and then the witness issued the notice to end tenancy, and personally served it on the tenant at the rental unit on August 26, 2014.

The landlord's second witness testified that she is the secretary of the board, and on August 22, 2014 she was called to the rental complex and saw feces on the ground and on the wall beneath the tenant's rental unit. She received more calls, perhaps 3, saying that more had been found on the wall, the ground and the garden hose on later occasions. She attended at the police station and an officer advised her to evict the tenant. A board meeting was held by conference call and the board decided to issue the notice ending the tenancy.

During cross examination, the witness testified that she, along with the site-manager went with the tenant to the rental unit to hear the noise the tenant had complained about and there was no noise. At that time, the witness advised the tenant that she lives in an apartment and there's bound to be some noise.

The tenant testified that she has complained about the neighbouring tenant and the landlords have failed to do anything.

The tenant also denies that any feces was poured down the balcony of the rental unit and testified that the landlord has not established that the balcony in the landlord's photographs are that of the tenant's rental unit. The balconies were painted brown in the summer, and the photograph shows a white balcony. Further, the tenant saw feces in another area at or near the complex and believes it is dog feces.

The tenant also testified that she was angry with the neighbouring tenant after consistently playing her stereo loud and the tenant turned on the vacuum cleaner and then went and had a shower. She heard the other neighbour knocking on her door and told him that she was causing the noise to make a point.

The tenant further testified that the landlord has not provided the tenant with her right to quiet enjoyment.

Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, and could include the reasons for issuing it. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. With respect to the reasons for issuing it, the tenant has admitted to deliberately making unnecessary noise to deliberately bother other tenants. The tenant had alternate options available to her to enforce her right to quiet enjoyment, and deliberately disturbing other occupants is not one of those options. Therefore, I find that the tenant has unreasonably disturbed another occupant or the landlord and the landlord had cause to issue the notice. The tenant's application to cancel it is hereby dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed 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: November 07, 2014

Residential Tenancy Branch

