Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLD TEAM MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenants' cross application pursuant to the Act for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenants were represented at the hearing by the tenant WR (the tenant). The landlord was represented at the hearing by DK, the landlord's vice-president (the landlord). The parties were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord elected to call a neighbor of the tenants AL (the neighbor) as a witness.

The tenant testified that he served the landlord with copies of the tenants' dispute resolution package by registered mail to the owner's address and by dropping off the package with the landlord at the landlord's place of business. The landlord confirmed that he received the dispute resolution package on 13 November 2014. On the basis of this evidence, I am satisfied that the landlord was served with notice of the tenants' application and dispute resolution hearing package pursuant to section 89 of the Act.

The landlord testified that he served the tenants with the dispute resolution package and evidence by registered mail on 21 November 2014. The landlord provided me with two tracking numbers for these mailings. The tenant confirmed that the tenants received the dispute resolution package and evidence. The tenant confirmed that he had an opportunity to review the video evidence submitted by the landlord. On the basis of this evidence, I am satisfied that the tenants were served with notice of this application pursuant to sections 88 and 89 of the Act.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? Is the landlord entitled to an order of possession for cause? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the electronic and documentary evidence, including photographs, miscellaneous letters, emails messages, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlord's cross claim and my findings around each are set out below.

The rental unit is a multilevel townhome. The south wall is shared with the neighbour and her spouse. There are neighbours that share the north wall of the rental unit. The tenants moved into the rental unit on 15 July 2014. The unit is occupied by the tenants and their son. The rental agreement was executed 20 June 2014 by the tenants and the landlord's former employee. Monthly rent of $1,695.00 is due on the first. The landlord collected and continues to hold a security deposit of $847.50.

The tenant and neighbour both testified that in August 2014, the neighbour notified the tenant LR that the noise from a slamming door was bothering the neighbour.

The landlord testified that on 27 August 2014, the tenants' son had visitors at the home that resulted in noise complaints and a non-emergency call to the police. The tenant testified that the police did not issue any tickets or warning, but suggested that the tenants' son turn down his music and shut the windows.

On 3 September 2014, the strata council contacted the owner of the rental unit. The letter set out that:

> *Several complaints have been received about the excessive noise coming from your Strata Lot. This noise has been described as; "slamming the front door, slamming the patio door, stomping up and down staircases, items being loudly put on the floor (thumping), walking extra heavy footsteps, loud music and entertainment, as well as late night chatter on the balcony." This issue, which*

began almost immediately after the tenants took possession, has been reported by several neighbouring Strata Lot Owners to occur every day. ...
Please note that this issue has become so severe that on Wednesday, August 27th, at 10:00pm the RCMP had to be called to shut down a party that was taking place within your unit. Excessive noise continued later that evening and well into the following morning.

On 23 September 2014, the landlord provided a copy of the 3 September letter to the tenant by regular mail. The tenant did not receive a copy of this letter and the enclosures until 14 October 2014 when the landlord emailed the tenant a copy of the correspondence. The 23 September 2014 letter set out in part that:

Your conduct is completely unacceptable and is a material breach of your tenancy agreement. We could terminate your tenancy due to these multiple infractions.

On 3 October 2014, the landlord and the tenant LR met. The landlord testified that the tenant LR said that she was aware of noise complaints but didn't understand what was causing the noises.

On 10 October 2014, the landlord sent an email to the tenant LR to follow up on their conversation of 3 October 2014. This email indicated that the strata council was considering levying fines as a result of the noise complaints.

On 21 October 2014, the strata council sent a letter to the owner of the rental unit. The strata levied a $200.00 fine against the owner. This letter set out, in part, that:

It has come to our attention that noise complaints regarding your Tenant's behaviour in regards to making loud noises at all hours of the day and night is continuing to cause a great deal of anxiety to another owner. This behaviour has been ongoing for a long period of time and must stop immediately.

On 22 October 2014, the landlord sent a "Second and final violation warning" to the tenants. This letter set out that:

As you are aware there have been multiple additional complaints in regards to noise coming from your unit since the first warning letter was issued.
Due to that the strata have now issued a fine of $200.00. ...
As this is your second warning in regards to the by-law infractions in a very short time period, I am hereby informing you that if we receive any further complaints that a one month notice for cause to terminate the tenancy will be issued immediately and you will be evicted from the property.

On 23 October 2014, the landlord sent a copy of the 22 October 2014 bylaw contravention fine notice to the tenants.

On 31 October 2014, the strata council issued another bylaw contravention letter. This letter was delivered to the landlord by email and included a covering email from the property manager:

> *I have also received the following email this morning....*
>
> > *I would like to follow up on this, both thumping and door slamming had been increased since last night accompanied by very loud blasting of subwoofer, specially the thumping continued until around 12:30 midnight. Also as I'm typing up this email, [the rental unit] had been thumping up and down their entire unit (all 3 floors) for at least a solid 1 hour including exiting and reentering their unit with very heavy slamming of their front door 4+ times within the said hour – are they renovating?"*
>
> *Please take immediate action as this behaviour is totally unacceptable!*

On 31 October 2014, the landlord and tenant met at the tenant's office. At that meeting, the landlord handed the 1 Month Notice to the tenant. The 1 Month Notice was dated 31 October 2014 and set an effective date of 30 November 2014. The second page of the 1 Month Notice indicated that the notice was given because:

> *The tenant or a person permitted on the property by the tenant has...significantly interfered with or unreasonably disturbed another occupant...*
>
> *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*

The neighbour provided detailed accounts of the noises that emanated from the rental unit. These accounts noted various noises the neighbour considered problematic including thumping, jumping, running, slamming the front door, banging, screaming, dropping heavy items on the floor, and loud music.

The neighbour testified that she has lived in her unit for the past eight years. Over those eight years, three different families have occupied the rental unit. The neighbour testified that they never had any complaints related to noise related to the occupancy of the rental unit by the two previous families before the tenants.

The neighbour testified that she did not speak to the tenant again about the noise because she noted that after her first conversation the noise just got worse. The neighbour considered that to be a sign that her first complaint was taken negatively by the tenants. The neighbour testified that the noise is "very invasive" and that it is almost like the noise is happening in her own unit. The neighbour testified that the door is being slammed so hard it is almost as if it is intentional.

The neighbour testified that since 31 October 2014, the noise has continued. The neighbour adopted her submissions of 17 November 2014 as her evidence. This letter sets out the effect the tenants' behaviour has had on her and her spouse:

> *...we have had to endure an overwhelming amount of noise from next door, which has left a substantially negative impact on our quality of living, our comfort and our peaceful living in our own home. Despite personally speaking to the tenants in August about the door slamming, the slamming has continued without improvement, worsened over time and still persists to date.*
> *The door slamming and other disturbances often interrupt our work, our peace, our sleep and the basic enjoyment of our home. ...*
> *The force at which the doors (main front, garage and balcony doors) are slammed is also very strong and unusually loud and invasive. The severe force causes our home to shake, which is very disturbing.*

The landlord provided me with five different video recordings. These recordings were taken through the peephole of the neighbours' entrance and were recorded on 7, 13 and 15 November 2014. These videos all appear to show the tenants' son (or another occupant of the rental unit) exiting or entering the rental unit. In all of the videos the person pictured in the video either slams the rental unit door or the garage door in such a manner so as to be very audible from the neighbour's home. In one video, the neighbour's door can be seen shaking from the force with which the rental unit's door was slammed. I accept that the videos are representative of the types of noise complained of by the neighbour and that led to the 1 Month Notice.

The tenant suggested that it is the washing machine that is causing the thumping sounds of which the neighbour complains. The tenant suggested that the neighbour must be particularly sensitive to noise. The tenant testified that he spoke to his northerly neighbour and that this neighbour did not have any complaints about noise from the tenants' unit. I was not provided with any written statement or testimony from the northern neighbour. The tenant testified that he got the impression that the landlord did not want to solve the issue and just wanted to break the lease. The tenant alleges they are not being treated fairly. The tenant did not suggest any reason why the landlord might want to break the lease.

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord has set out this reason as one of its basis for cause. I find that the noise complained of by the neighbour constitutes an unreasonable disturbance of the neighbour.

The tenants knew of complaints relating to noise from the home as early as August and were reminded again on 3 October 2014. The tenants received written notice from the landlord on14 October 2014. This notice provided the particulars of the noise complaints and warned the tenant that the landlord considered these violations grounds to end the tenancy. The tenants were provided with a second and final warning letter on 22 October 2014, a week after the first complaint was received. The tenants received their notice to end tenancy on 31 October 2014.

Noises such as slamming doors, stomping up and down staircases, loud music and entertainment and late-night conversation are not the type of noises that should take more than a day to correct. I find that the landlord acted reasonably in allowing the tenants the opportunity to correct the unreasonable disturbance of the neighbour and that the tenants did not make use of this opportunity. Accordingly,I find that the landlord had sufficient cause to end the tenancy by way of the 1 Month Notice.

As the tenants have provided an amount equivalent to rent for December to the landlord, I permit the tenants to continue to occupy the rental unit for the remainder of the month. However, as the hearing was conducted on 1 December 2014, the day rent was due, I find that it was clear to the tenants that payment of this money did not constitute a reinstatement of the tenancy, and was merely for the use and occupancy of the rental unit. The landlord is provided with an order of possession for one o'clock on 31 December 2014.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $50.00 filing fee paid for this application.

DK testified that the landlord continues to hold the tenants' $847.50 security deposit plus interest paid on 23 June 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain a portion of the security deposit in satisfaction of the monetary award.

Conclusion

The landlord is provided with a formal copy of an order of possession effective one o'clock on 31 December 2014. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to recover the $50.00 filing fee from the tenants by allowing the landlord to retain $50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from $847.50 to $797.50.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 05, 2014

Residential Tenancy Branch