



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERSIDE GARDENS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant seeks to cancel a 1 Month Notice to End Tenancy for Cause, (Notice), dated January 19, 2015.

Both parties were present and the hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The 1 Month Notice to End Tenancy for Cause indicated that the landlord is ending the tenancy effective February 28, 2015 because the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and that the tenant had seriously jeopardized the health safety or lawful right of another occupant or the landlord.

The tenancy began in November 2014. The landlord submitted into evidence copies of incident reports and written complaints they received from other tenants spanning a period from 2009 to the present date.

Some of the conduct reported by the landlord and in the written complaints alleges that the tenants made excessive noise by slamming doors, stomping up the stairs, yelling, arguing, using profane language, allowing their cats to defecate in common areas or other yards, permitting their children to violate the curfew and purposely thumping on

doors and walls. One complaint alleged that one of the tenant's children knocks on a neighbour's door and runs away.

The landlord stated that they have lost tenants and some are threatening to seeking arbitration against the landlord based on loss of quiet enjoyment.

The landlord testified that, after repeated warnings, they had no other choice but to issue a 1 Month Notice to End Tenancy for Cause and they feel that the tenant's application to cancel the Notice should be dismissed.

The tenant testified that they had up to 6 children living in the suite at times and they made normal noise expected in a family situation. The tenant pointed out that the building, built in 1972, is not very sound proofed and simply going up the stairs can be clearly heard between suites. The tenant testified that they also hear noises, like slamming of doors and footsteps on the stairs from adjacent suites. The tenant pointed out that their entry door does not fit properly, even after having been adjusted by the landlord, and requires force to shut it properly.

The tenant denied that they had ever played loud music after hours as they do not own a stereo, denied that garbage is being thrown in people's yards by them and denied that their cats are roaming loose to defecate around the complex common areas. The tenant stated that the yard being littered is next to a walkway. The tenant testified that they have two litter boxes inside and there are also many outdoor cats at the complex belonging to other residents that look similar to their cats. The tenant stated that occasionally various children in the complex have played pranks on residents, including them, by knocking on the door and running away.

The tenant stated that people passing outside by their open windows in the warm season can likely overhear family squabbles and conversations and may well find them annoying. But the tenant stated that this does not qualify as unreasonable disturbance and they do not normally allow foul language as a rule.

In regard to the curfew imposed by the complex, this rule apparently prohibits children under 18 from being outside on the property after 9:00 p.m. The tenant stated that her children have not been allowed to violate the curfew. The tenant pointed out that, on one occasion, there were police investigating an incident involving other residents, and an officer had asked the tenant's daughter to remain outside to be interviewed as a witness.

The tenant stated that there are now only 3 children living in the rental unit. However, the tenant did acknowledge that they are currently having problems with one of the children who has been acting out by yelling and in one instance slamming his scooter

on the floor in a rage. The tenant testified that the child is now in counselling and provided a letter from the treatment organization.

The tenant pointed out that they have been living relatively peacefully in the complex for over 15 years and the documentation shows that the complaints are not continuous and most were not investigated sufficiently to prove they were valid concerns.

The tenant feels that the landlord's evidence is not sufficient to prove that ending the tenancy is warranted and requests that the 1 Month Notice to End Tenancy for Cause be cancelled.

Analysis

Section 28 of the Act protects a tenant's right to quiet enjoyment. This right applies to other residents in the complex as well as the tenant.

I find that some of the complaints, even if proven to be true, such as steps on the stairs and slamming of doors, are not violations of the Act, given the vintage of the building, condition of the door and the age of carpeting. I also find that the fact that a resident who is passing by the unit outside can hear family squabbles does not qualify as an unreasonable disturbance, nor does the fact that boisterous children run around and verbally confront one another in the playground.

In regard to the landlord's allegations that the nine-o'clock curfew imposed by the complex is being violated, I find that pursuant to sections 28(d) and 30(1) of the Act which protect a tenant's right to access and enjoyment of the rental premises including common areas, this would be considered as an unconscionable term. As such the term is not enforceable under section 6(3)(b) of the Act.

I further find that some of the complaints, such as those about the tenant's cats, noisy stereo, garbage being thrown into a yard and annoying pranks, were never adequately proven to be perpetrated by the tenant.

Based on the evidence before me, I find that there is not sufficient cause to terminate this tenancy at this time and I find it necessary to cancel the 1 Month Notice.

However, I do find that some of the conduct of these tenants does constitute an "unreasonable disturbance" under the Act, particularly the use of foul language, noisy tantrums that have occurred and the disruptive behaviour of the tenant's son, who is under the care of a counsellor.

For this reason, I caution the tenant that future disturbances of this nature may place their tenancy in jeopardy if they continue.

This decision will serve as a warning and the tenant is now aware that if similar conduct is repeated, it could function as a valid reason to issue another Notice to terminate tenancy for cause under section 47 of the Act.

In cancelling this Notice, I encourage the landlord to investigate potential noise reduction measures such as new carpeting on the stairs and adjustments to the doors.

Based on the evidence before me, I hereby order that the 1Month Notice to End Tenancy, dated January 19, 2015, be cancelled and of no force or effect.

As the tenant is successful in the application, I order that they be reimbursed the \$50.00 cost of this application by reducing their next rent payment to the landlord by \$50.00 as a one-time abatement.

Conclusion

The tenant is successful in the application and the 1 Month Notice to End Tenancy for Cause is cancelled.

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: February 05, 2015

Residential Tenancy Branch

