



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This is an application to cancel a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties and their witnesses the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a 1 month Notice to End Tenancy that was given for cause.

Background and Evidence

On February 2, 2015 the landlord spoke to the tenant about a complaint of excessive noise coming from his rental unit and advised the tenant that the noise would have to stop.

On February 24, 2015 the tenant was sent a warning letter by the landlord's legal counsel again advising the tenant that they had complaints of an excessive, unreasonable amount of noise in the early hours of the morning and again asked him to stop making this noise.

On March 2, 2015 the tenant was sent another warning letter by the landlord's legal counsel again advising the tenant to stop the excessive noise and advising that legal proceedings would be taken against him if he did not comply.

On March 25, 2015 the tenant was served with a one-month Notice to End Tenancy giving the following reasons:

- tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturb another occupant or the landlord
 - seriously jeopardize the health or safety or lawful right of another occupant or the landlord.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that they have had numerous complaints about excessive noise coming from the applicant's rental unit at all hours of the day and night. Frequently the complaints were that the noise would continue until as late as 3 AM.

The landlord testified that the complaints were of a scraping noise, a pounding noise, a grinding noise, and a drilling noise.

The landlord stated that, since the noise continued even after the tenant had been warned, they decided they would need to end his tenancy to preserve the peace and quiet for the other occupants of the rental property.

The landlords presented witness testimony from a total of six witnesses who are all tenants in the rental property and all six of those tenants complained about noise including sounds of scraping, pounding, hammering, grinding, and drilling.

One of the landlord's witnesses lives in the suite directly below the applicant and testified that the noise is definitely coming from directly above his rental unit and even testified that at one point he went and listened outside the door of the applicants rental unit and he could definitely hear the sounds coming from within the applicants rental unit.

The landlords are therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenant testified that he is not making a noise in his rental unit and has no idea where the noise is coming from, as he does not hear any noise.

The tenant further testified that he has a hobby in which he builds birdhouses and attempts to attach them to branches and he uses a small handheld rotary tool to strip the bark off of those branches.

The tenant claims he is making no hammering noises, no scraping noises, no grinding noises, and no drilling noises.

The tenant further stated that he works on his hobby at numerous hours during the day and often in the evening up until about 3 AM.

The tenants witness, who lives next door to the tenant, testified that she has not heard any noise of any kind.

The tenants advocate argued that although the landlord has had complaints of noise, the landlord has done no investigation or attended at the tenants rental unit to determine whether or not the noise is coming from this tenants rental unit.

The advocate further argues that without a proper investigation by the landlord to determine whether the noise has been coming from this unit, it is unreasonable for the landlord to have issued an Notice to End Tenancy and requests that the notice be canceled.

Analysis

It is my finding, that they landlords have shown “on the balance of probabilities” that the applicant/tenant is causing excessive noise at all hours of the day and night, including into the wee hours of the morning.

The tenant claims that he is not making any noise or using any tools other than a rotary tool, however the overwhelming amount of testimony from other tenants in the rental unit indicates to me that there is excessive noise coming from this tenant’s rental unit.

The tenant in his own testimony admitted that he is using a rotary tool to strip bark from branches so as to attach birdhouses and, although he may believe that this does not make a significant amount of noise it is my finding that whatever he is doing is making a significant amount of noise, and is unreasonably disturbing the other occupants of the rental property.

I will therefore not cancel the Notice to End Tenancy and this tenancy ends pursuant to that notice.

The landlords have requested an Order of Possession, and therefore since the tenant has paid his rent for the month of May 2015 I have issued an Order of Possession for the end of May 2015.

Conclusion

This application to cancel a Notice to End Tenancy is dismissed without leave to reapply and I have issued an Order of Possession to the landlord for 1:00 PM on May 31st 2015.

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: May 14, 2015

Residential Tenancy Branch

