



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Does the landlord have cause, within the meaning of the Residential Tenancy Act, to end this tenancy?

Background and Evidence

This one year fixed term tenancy commenced December 1, 2014. The monthly rent of \$800.00 is due on the first day of the month. The tenant paid a security deposit of \$400.00. BC Housing pays a rent subsidy of \$425.00 directly to the landlord; the tenant pays the balance of \$375.00.

On March 28, 2015 the landlord issued and served the tenant with a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice is that the "Tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord."

The rental unit is one of eleven apartments in a two story building. The building is about fifty years old. All parties acknowledge that there is minimal soundproofing between the units.

The tenancy got off to an acrimonious start. On December 5 at 4:35 am the tenant sent the landlord a text message complaining about the temperature in the unit. When the landlord responded to the tenant at 9:01 am asking the tenant not to contact her for non-emergent issues this initiated an unpleasant exchange of text messages, the contents of which are not quoted in this decision. The landlord's evidence is that she was at the unit on December 4 with maintenance when the tenant asked to have all the valves for her heat adjusted and opened.

The tenant found the music played by her neighbour below her loud and disruptive. She complained to the landlord many times about the noise. An example of the communication on the topic is set out in a series of text messages on the evening of December 31. The tenant complained about the neighbour's noise at 4:42 pm. The landlord responded with:

"Its 5pm in NYE. If she wants to listen to music there isn't much I can do about it as it is her right to do so. The building is 1962 and wood frame so will be able to hear some noise from your neighbours and you knew about this when you moved in. I can't make up a unreasonable list of rules for her no more than I csn for you. If she would like to listen to music at 5 pm on NYE, by tenancy law, she has the right to do so. Should you wish to proceed further, you will need to phoje the police because there is nothing I can do."

The tenant responded as follows:

7:52 pm – "You were told and if you're incapable of listening to wjat is being told to you, then you need a job that doesn't included dealing with people."

7:52 pm- "You need to buck up and do your job"

7:55 pm – "You lied to me and now feigning that we're all suppose to along with some spoiled whiney girl, she's a low life bully and you're avoiding responsibility IF HIGH HEELS BOTHERED HER THEN HER NOISY MUSIC IS TOO MUCH. FUCK! I hate doing other people's thinking. Start doing your own."

7:56 pm – "The music is being used to harass me withj intent. You know, she knows it. You allowing it means you're a bully."

When the landlord responded that she did not find the neighbour's actions unacceptable and set out some options for the tenant, including RTB arbitration the tenant responded as follows:

8:14 pm – "Surprise surprise you're avoiding your job"

8:14 pm – "Yep pretending the problem isn't your responsibility and it disappears. Don't have kids, you'll only create whiney brats the rest of us have to raise when they're adults."

8:56 pm – "Bullies always turn a blind eye to other bullies. You all have to cause problems, then blame the person you target when they want a solution. You all lie to everyone including yourselves. You all need each other to collude on creating and maintaining the problems. You're all very unhappy miseries, and you're a dime a dozen. It's pandemic, the assholes. Read Dr Robert I Suttons book, "The No Asshole Rule" and get yourself some education on hour you're making you unhappy . . .LOL I dare ya read it."

The landlord's evidence is that while she was receiving these text messages she went to the building. Her evidence is that the neighbour's music was almost silent.

Throughout January the tenant frequently complained about her neighbour's music. On January 18 she reported to the landlord that she had met her neighbour in the laundry room and they had had an argument.

Some of the action taken by the tenant against her neighbour was to look in her window and yell at her. The landlord submitted videos taken by the neighbour on February 28 and March 1. In the March 1 video the tenant's face is very near the neighbour's window and she is mocking and berating her. The video goes on for several minutes. The neighbour now keeps her blinds shut; has signs posted that she will record conversations and actions; and has told the landlord that if the tenant stays in the building she is moving.

Both the tenant and the downstairs neighbour have called the police about the other's noise. Although police have attended in response to the calls, no charges have been laid.

All of the tenant's text messages about the noise are before 9:00 pm. The tenant testified that she goes to bed early and gets up early. She is a creative person – a writer and an artist – and the noise from her neighbours makes it difficult for her to think or work.

The tenant testified that she does not like to fight but she will stand up for her rights. In particular, she does not tolerate bullying. She also stated that “you won't like my tone of voice when I am standing up to bullying.”

Two of the tenant's friends testified. They have met the tenant through community events. Their opinion is that she is a truthful and nice person. They have not seen her start an argument but she does stand up for her rights.

A friend of the tenant's filed a letter in her support. This person stayed in the rental unit (without the knowledge or permission of the landlord) from December 17, 2014 to February 7, 2015. She states: “Generally between the hours of 5 to 9 PM, loud music with heavy bass would come thumping through the floorboards in the unit. [Tenant] repeatedly indicated to me that she found the music to be a form of harassment and I believe she had made numerous complaints to the Landlord about this issue.”

Another friend and former roommate of the tenant submitted a letter that stated the tenant “regularly retired for the night at about 9 – 10 pm. She rose at about 8 am – 9 am and was very quiet.”

The landlord provided evidence about a dispute between the tenant and Canada Post. Canada Post reported to her that the tenant would wait for the carrier to arrive at the building and then confront him about mail delivered to her mailbox that was not addressed to her. Eventually mail delivery temporarily suspended and a Canada Post supervisor was called in for a meeting with the carrier and the tenant. The tenant confirmed that she had a fight with Canada Post. She expressed the view that Canada Post's practise of delivering mail to the unit, whether the addressee lived there or not, a breach of privacy laws.

The BC Housing portion of the May rent was paid to the landlord. The tenant took the position that since a move-in inspection was not properly conducted the landlord would not be entitled to retain the security deposit so she wanted \$375.00 of the security deposit applied to the balance of the May rent. The landlord served the tenant for a 10 Day Notice to End Tenancy for Non-Payment of the May rent.

Analysis

In buildings of this age and construction all of the residents must live with the noise of everyday living from their neighbours. It is only if the noise is excessive or occurs when people usually sleep that a landlord can take any action.

The tenant's evidence is that:

- She rises around 8:00 am and goes to be at 9:00 pm or later.
- The noise from the downstairs neighbour is usually between the hours of 5:00 pm and 9:00 pm, although she testified that there was loud music on February 28 between 10:00 pm and 11:00 pm.
- Some of the other neighbours have disturbed her with the sound of sexual activity, card playing and occasional yelling.

Although the tenant may not have liked her neighbour's choice of music there is no evidence that it was excessively loud or could be heard during the house when the tenant was generally in bed.

When the landlord tried to explain the legal parameters within which all landlords must operate the tenant's response was hostile and derogatory.

Although the tenant characterized her behaviour as standing up against bullies I find, based upon the content of all of her text messages, the video of her confronting her neighbour, and her demeanour in the hearing that her approach went well beyond that. She displayed hostility, aggression, and a lack of consideration towards her neighbours and the landlord. I have no difficulty finding that the "Tenant has significantly interfered

with or unreasonable disturbed another occupant or the landlord” and that the landlord has cause to end this tenancy.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord’s notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession. The landlord did make an oral request for an order of possession.

Section 21 provides that unless the landlord gives written consent, a tenant must not apply a security deposit or pet damage deposit as rent. In other words, the tenant cannot unilaterally designate the use of all or a portion of the security deposit as the May rent.

As the May rent has not been paid in full, the landlord is entitled to an order of possession effective two days after service on the tenant.

As the tenant was unsuccessful on her application no order for reimbursement of the filing fee will be made.

Conclusion

An order of possession effective two days after service on the tenant has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.

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 18, 2015

Residential Tenancy Branch

