



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Widsten Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that he personally served the Landlord with the Application for Dispute Resolution, the Notice of Hearing, and three documents the Tenants wish to rely upon as evidence, although he cannot recall the date of service. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On May 29, 2015 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were personally served to the Tenant by on June 01, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began sometime prior to 2008 and that the Tenants are currently required to pay \$828.00 in rent by the first day of each month.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on May 05, 2015, which declared that the Tenant must vacate the rental unit by June 30, 2015. The reason cited for ending the tenancy on the Notice to End Tenancy is that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord stated that the Landlord wishes to end this tenancy, in part, because there have been on-going issues with noise disturbances. The Landlord submitted a letter from the occupant of the upper rental unit, dated May 26, 2015, and various emails in which she outlines the nature of the disturbances.

In the documentary evidence the person living in the upper rent unit declares that:

- there have been regular noise disturbances since she moved into the rental unit four years ago
- there has been “non-stop fighting, slamming of doors, and loud music”; and
- they have “no problem cutting wood after midnight, hammering on metal at 3 a.m., turning on a generator at 10 p.m., moving vehicles in the driveway at 4 a.m., moving items in and out of the electrical room all hours of the night 2-3 times a week”.

The Tenant stated that:

- the person living in the upper rental unit complains frequently about noise
- he does not believe the Tenants are being unreasonably noisy;
- on one occasion the person living in the upper rental unit told him his music was too loud and when he went to her rental unit he could not hear his music
- he has asked the person living in the upper rental unit to bang on her floor if he is being too loud;
- the person living in the upper rental unit has banged on her floor on a few occasions;
- he has never responded inappropriately to the banging;
- the Tenants do not use power tools or work on vehicles at unreasonable hours; and
- the Tenants have never used a welder on the residential property.

The Landlord stated that he has never witnessed excessive noise at the rental unit. He stated that on February 25, 2014 he provided the Tenant with a caution notice as a result of the complaints he received for the person living in the upper rental unit. A copy of the caution notice was submitted in evidence. The Tenant stated that he does not recall receiving the caution letter in February of 2014.

The Landlord stated that he does not intend to call the person living in the upper rental unit as a witness.

The Landlord stated that the Landlord wishes to end this tenancy, in part, because there were several disturbances in the rental unit during the end of April and the beginning of May of 2015. The Landlord stated that the person living in the upper rental unit informed him that on April 28/29 of 2015 she was disturbed by loud yelling and that the Tenants' guest had been removed from the rental unit by the police.

The Tenant stated that:

- on, or about, April 29, 2015 he allowed a young woman, who is his nephew's friend, to shower and eat at his home;
- during the early morning hours he confronted the young woman in regards to a theft and a loud argument ensued;
- he does not recall if he contacted the police or if the person living in the upstairs unit contacted the police, but the police attended; and
- when the police arrived at the rental unit he asked that the guest be removed from the unit.

The Landlord stated that:

- the person living in the upper rental unit reported that the young woman who had been removed from the rental unit returned to the rental unit on three or four occasions after April 29, 2015;
- the young woman created additional disturbances on those occasions; and
- on each occasion the police attended the residential property to remove the Tenant.

The Landlord submitted emails from the person living in the upper rental unit, dated April 30, 2015, May 01, 2015, and May 04, 2015, which details the disturbances caused by the young woman.

The Tenant stated that:

- the young woman returned to the rental unit on three of four occasions after she had been removed by the police;
- while she was at the residential complex the young woman was loud and was banging on doors/windows of the residential complex;
- the young woman has never been allowed to enter the rental unit after April 29, 2015;
- the Tenant told the young woman to leave the unit/property every time she attended the unit/property after April 29, 2015;
- on one occasion the young woman entered the rental unit without invitation while he was outside speaking with a taxi driver;
- the young woman was not in his home on May 04, 2015 and the person living in the upper rental unit could not have seen her come out of the rental unit;
- it is possible that the person living in the upper rental unit saw the young woman come out from below a deck area on May 04, 2015;
- on two occasions he phoned the ambulance or the police in regards to the young woman;

- on one occasion the taxi company phoned the police in regards to young woman;
- he believes the person living in the upper rental unit has phoned the police in regards to the young woman;
- any disturbances caused by the young woman after April 29, 2015 were beyond his control; and
- the police car that was seen in the area at 7:00 a.m. on May 04, 2015 was attending to a vehicle in the ditch, which was not associated to the Tenant.

Analysis

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant or a person permitted on the residential property by a tenant has significantly interfered with or unreasonably disturbed the landlord or another occupant of the residential complex. The landlord bears the burden of proving there has been a significant interference or an unreasonable disturbance.

I find that the Landlord has submitted insufficient evidence to establish that the Tenants have been unreasonably noisy at any time prior to April 28, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the documentary evidence from the person living in the upper rental unit or that refutes the Tenant's testimony that the Tenants have been unreasonably noisy. In determining this issue I was heavily influenced by the fact the person living in the upper rental unit did not appear as a witness so the Tenant was unable to question her in regards to her allegations.

While it is clear that the person living in the upper rental unit is being disturbed by the Tenants, I have insufficient evidence to conclude whether the disturbances have been unreasonable. In situations where one occupant thinks the noise is excessive and another occupant thinks it is reasonable, a landlord bears the burden of determining whether the noise is unreasonable. This can occur by recording the disturbances or by having an unbiased third party testify regarding the noise disturbances.

In the absence of evidence that the Tenants have been unreasonably noisy prior to April 28, 2015, I find that the Landlord does not have grounds to end this tenancy on the basis of those allegations.

On the basis of the undisputed evidence, I find that there was a loud argument in the rental unit on, or about, April 29, 2015; that the police were called as a result of the argument; and that young woman who was a guest of the Tenants was removed from the rental unit. While I accept this was an unreasonable disturbance, I find that the tenancy should not end on the basis of this isolated incident.

On the basis of the undisputed evidence, I find that the young woman who had been a guest of the Tenants returned to the rental unit/residential complex several times after

she had been removed by the police on, or about, April 29, 2015. In the absence of evidence to the contrary, I accept the Tenant's testimony that the young woman did not return to the rental unit after April 29, 2015 at the invitation of the Tenants.

As section 47(1)(d)(i) of the *Act* only authorizes a landlord to end a tenancy if there has been a disturbance caused by the tenant or a person permitted on the residential property by a tenant and the evidence shows that the young woman was not permitted on the residential property by the Tenants after April 29, 2015, I cannot conclude that the Landlord has the right to end this tenancy as a result of any disturbances caused by the young woman after April 29, 2015.

After considering all of the evidence, I find that the Landlord has failed to establish grounds to end this tenancy in accordance with section 47(1)(d)(i) of the *Act*. I therefore grant the Tenants' application to set aside the One Month Notice to End Tenancy that is the subject of these proceedings.

Conclusion

As I have set aside the One Month Notice to End Tenancy, this tenancy shall continue until it is ended in accordance with the *Act*. The Landlord retains the right to serve the Tenants with another One Month Notice to End Tenancy if there is evidence of further disturbances.

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

Dated: June 22, 2015

Residential Tenancy Branch

