



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EMERGE REALTY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated June 24, 2015.

The Notice alleges that the tenant or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Such an allegation, if proved, is an authorized ground for eviction under s. 47 of the *Residential Tenancy Act* (the “Act”).

The landlord indicates that it is the tenant himself who has disturbed another occupant.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant has significantly interfered with or unreasonably disturbed another occupant?

Background and Evidence

The rental unit is a bachelor apartment in a 37 unit apartment building of unstated age.

The tenancy started in September 1995. The current rent is \$710.00 per month, due on the first of each month. The landlord holds a \$235.00 security deposit.

The landlord’s representative Ms. C. testifies that in 2014 the landlord received complaints from G.D. and A.H., the tenants living next door to the applicant tenant, about noise coming from his apartment. It does not appear that the landlord conducted any investigation about it. A letter was written to the tenant indicating that there had been complaints and that recordings of the noise had been made. The letter also

addressed the tenant's repeated phone calls to the landlord. The letter indicates that the landlord and tenant had conversed about the issue and that if the behaviours continued the landlord would be forced to take action.

In or about June 2014 the landlord moved the complaining tenants G.D. and A.H. to a different apartment two floors below. It would appear that matters subsided after that, with no recorded complaints about the tenant.

Ms. C. says that in 2015, the tenant made friends with Mr. D.W, who lives next door to the tenants who had complained before. She says that the tenant started spending time in Mr. D.W.'s apartment, drinking with him, and that the tenant once again caused noise that caused his former neighbours, Mr. D.W.'s current neighbours, G.D. and A.H. to complain again.

The complaining tenants, who were described by Ms. C. as professional people who paid the highest rent in the building, moved out.

Ms. C. testified that she had also received multiple calls from various tenants in the building. She did not provide the names of other complaining tenants or the dates the complaints were made.

Ms. C. submitted an unsigned, typewritten statement said to be from G.D. and A.H. along with seven digital recordings purporting to have been taken by G.D. and A.H. in 2014 and 2015.

As stated during the hearing, unsigned statements are of little if any evidentiary value to prove the contents of the statement. Nevertheless, the recordings were listened to.

The first five recordings, made in 2014, were clearly recordings of the tenant, apparently talking on the telephone from his balcony in three of the recordings. A fourth appears to be the sound of music coming and the fifth the sound of the tenant arguing with someone at a distance.

The sixth and seventh recordings, apparently made on June 22, 2015, were inaudible.

Ms. C. testified that on June 22 she received repeated calls about the tenant's noise. She says it was reported that he was drunk. It is not clear whether the calls were all from G.D. and A.H.

Ms. C. presented an email from another tenant, L.G. dated May 4, 2015 complaining about someone with “a naturally loud voice” on the ground floor balcony who is frequently out there and is “very very loud” and uses bad language. L.G. wrote again about noise.

On June 10, 2015, the landlord’s representative Mr. P. McK. emailed to Mr. D.W. about “noise and smoking violations” reported to have come from his unit in recent weeks. The email names the applicant tenant and describes him as the cause of the bulk of complaints, pointing out that Mr. D.W. is responsible for the conduct of his guests.

As noted at hearing, incidents that have alleged to have occurred after the Notice in question was issued are not relevant to whether or not good cause for eviction existed as of the date of the Notice.

Another tenant emailed the landlord on July 16, 2015 about noise from the ground floor and the smell of “weed.” The email does not identify any particular date or rental unit or person.

In response, the tenant emphasised the length of time he has been a tenant there and says that there were no complaints until this landlord took over management of the building. He speculates that they are trying to evict him in order to establish a more professional tenant accommodation (the building is apparently located near a hospital) and at higher rents.

He says that his former neighbours would complain about his music in the middle of the day. He says he did not know that his former neighbours G.D. and A.H. were living beside his friend Mr. D.W.

Mr. D.W. testified in support of the tenant. He says that any noise that comes from his suite is blamed on the applicant tenant, even when he is not there.

Ms. D.W. testified. She is the tenant’s girlfriend of six years. She says the balconies on the apartment building are less than a foot across.

Analysis

I have considered all the relevant evidence presented during this hearing though I may not refer to it all in this decision.

The ending of a tenancy is a very serious matter. A landlord proving just cause for eviction of this nature must present cogent and convincing evidence that another occupant of the apartment building has been significantly interfered with or unreasonably disturbed.

The best evidence the landlord has presented is the unsigned statement of G.D. and A.H. accompanying the audio recordings. No details were given about those recordings, for example, where they were taken. It is important to know whether the sound being recorded was from the inside of an apartment or whether it was from the edge of a balcony a few feet away from the tenant on the adjoining balcony. Without the testimony of G.D. or A.H. the question remains one of speculation. It is important to know whether the tenant appreciated that he was within earshot of the neighbours.

On the evidence before me, without some direct evidence from another occupant explaining when and how they have been significantly interfered with or unreasonably disturbed by the actions of the tenant, it would be merely a matter of conjecture to reach such a conclusion.

For these reasons I find that the landlord has not proved on a balance of probabilities that the tenant has significantly interfered with or unreasonably disturbed another occupant and I cancel the Notice to End Tenancy.

Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated June 24, 2015 is hereby cancelled.

This decision should not be taken as deciding that the tenant's actions have not significantly interfered with or unreasonably disturbed other. Merely that it has not been adequately proved at this hearing.

I find there is no evidence to support the tenant's allegation that the landlord is trying to evict him for ulterior purposes.

It is apparent from the tenant's attendance and from the recordings that he has a naturally loud voice. As well he has the tendency to yell instead of talk. To compound matters, the tenant is of an argumentative nature, as is clear by the recordings of his telephone conversations. He has the tendency to be foul mouthed.

These characteristics, if left unchecked, will no doubt lead to further complaints and, quite possibly, another eviction Notice. It is certainly possible that at a future hearing the tenant's vocal habits could be shown to have unreasonably disturbed another occupant of the building, particularly since he has now been made aware of them.

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: September 20, 2015

Residential Tenancy Branch

