



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, OPB, CNC, FF

Introduction

This was a cross-application hearing.

On July 3, 2015 the tenant applied to cancel a 1 month Notice to end tenancy for cause issued on June 23, 2015.

On July 10, 2015 the landlord applied requesting an Order of possession based on cause and breach of an agreement with the landlord and recovery of the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included written submissions and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenants' hearing documents and evidence on July 12, 2015.

The tenant said he did not receive notice of the landlord's application. The landlord served the tenant via registered mail sent to the rental unit address on July 17, 2015. The landlord's evidence included a copy of the Canada Post receipt. The Act deems registered mail is served effective the fifth day after mailing; however, the tenant has provided affirmed testimony that he did not avoid service and did not receive a notice to retrieve the mail. I find that the Canada Post receipt does not provide definitive evidence that the tenant was served, as the mail was returned to the landlord. I accept the tenants' testimony that he did not receive the notice of registered mail as errors in processing mail are not fail-proof.

Therefore, landlord's application and evidence was set aside. I explained that the landlord has indicated they wish to obtain an Order of possession. Pursuant to section 55 of the Act, the landlord would then be entitled to an Order of possession should the landlord prove that cause to end the tenancy exists. This would put the landlord in the same position as if the hearing documents had been served to the tenant; with the exception of filing fee costs.

The landlord was at liberty to provide oral testimony in relation to the excluded evidence.

At the start of the hearing the tenant requested an adjournment as he has had laryngitis. The tenant was fully able to express himself and could be heard without difficulty. A delay in the hearing could result in the tenancy continuing when in fact it might be required to end for cause. Therefore, I declined his request for adjournment as a delay would prejudice the landlord.

Background and Evidence

The tenancy commenced in April 2015, rent is \$550.00 per month, due on the first day of each month.

There was no dispute that the tenant received a one month Notice to end tenancy for cause on June 23, 2015; the date the Notice was issued.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if the tenant did not apply to dispute the Notice he was presumed to have accepted the Notice and that he must move out of the unit by the effective date of the Notice; July 31, 2015.

The reason stated on Notice was that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The rental unit is a 100 year old wood-frame building that has four rental units. The tenant resides in a unit that has another above, below and beside his.

On June 8, 2015 the landlord received a letter from the occupants of the unit above the tenant. They complained that the tenant slams doors, causes loud thumping and has people coming and going all night which is causing a disturbance.

On June 10, 2015 the landlord completed a Caution Note to the tenant, warning the tenant that there had been complaints during April and May 2015 of the tenant causing significant disturbances by slamming doors, playing loud music, yelling, having guests come and go at all hours of the night and making thumping and crashing noises.

The landlord said that her father gave the tenant a copy of this Note.

On June 23, 2015 the landlord issued the Notice ending tenancy for cause as the occupant of the unit below the tenant told her there had been disturbances on each day from June 19 to 22, 2015. On June 24, 2015 that occupant completed a written report for the landlord alleging the tenant had spit on the staircase on the walkway in front of the occupants' door, that he had guests staying overnight for several days, that bikes were being left on the property making it difficult to walk along the sidewalk. The occupant complained that someone was talking on the phone in the hall outside of the tenants' door.

On July 11, 2015 the occupant of the unit below the tenant wrote a letter to the landlord stating that at 7:30 a.m. she found strangers in the stairs leading to the tenants' unit. A female was sitting, slumped over on the stairs and there was a male at the top of the stairs. Shortly afterward the occupant saw the male in the backyard. The occupant did not see the tenant and had not seen these people at the property before. She was not comfortable with these people being in the building or walking around the property. The landlord did not discuss this report with the tenant.

The landlord said that on July 11, 2015 she went to the property to take pictures of the bikes and saw two people just outside the residential property doing what she thought looked like a drug deal. One of these individuals then walked into the rental unit and into the tenants' unit, without needing a key. The landlord went to the police on July 14, 2015 to report her suspicions of drug activity.

The occupant below the tenant issued a complaint on July 14, 2015 that the tenant was making noise at 3 a.m. which lasted for a period of 45 minutes.

On August 31, 2015 the occupant of the lower unit called the police as she was being disturbed by the tenant at 3 a.m. By the time the police arrived there was no noise.

The landlord read a letter from the occupants of the upper unit, who recently gave notice and vacated. They said, with the exception of the past four years their 17 year tenancy had been pleasant. The landlord confirmed that those occupants also had issues with a previous tenant.

The landlord said that since issuing the Notice ending tenancy she has not discussed any issues with the tenant.

The tenant confirmed that within several days of June 8, 2015 he was given a copy of the letter of complaint. The landlords' father met with the tenant and said the tenant should tell the other occupants that they were not living in the Taj Mahal.

The tenant said that the only other written communication he has received from the landlord was the Notice ending tenancy. The tenant said he does not know what a Caution Notice is.

The tenant said that there is no sound-proofing in the building; he can hear the neighbours' dog roll over in its bed. The tenant said he can hear doors open and shut and sounds coming from the units around him and that the house is not insulated for tenancies. On the night of the initial complaint the tenant was with friends watching a hockey playoff game; it was around 6 p.m. The tenant spoke with the occupants of the upper unit on one occasion and gave them his phone number should they have any complaint.

The tenant has no idea who it was in the stairway or in the yard. He said there are a lot of people in the area who collect bottles and they come and go. The tenant did have several bikes on the property.

In relation to the allegation of drug dealing the tenant said he is not a drug dealer. The tenant has a job and recently he was working night shifts and would come home between 2 and 5 a.m. He is not currently working night shifts, but may be scheduled to do so in the future. The tenant might put the television or radio on when he comes home. When other occupants allege he has multiple people in his unit he does not understand how they could know this. The tenant said it is likely the sound from the television or radio.

The tenant said that the person the landlord saw entering his unit was likely the tenants' son. He had come to visit for a period of time and the tenant had not locked his door.

When the police arrived on August 31, 2015 the tenant was asleep. He had gone to bed at 10 p.m. He said that the police woke him up when they knocked on his door.

The tenant said he can hear his neighbour getting up and walking on the floor and feels he cannot be singled out for noise complaints when the building is not sound-proofed. He is only making normal sounds of living.

Analysis

In a case where a tenant has applied to cancel a Notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching this conclusion I considered the reports of disturbances made up to the time the Notice was issued on June 23, 2015 and whether any problems occurred after that date.

In consideration of the reason given on the Notice ending tenancy, I have based on my assessment, in part, on the meaning of the terms upon which the Notice was issued.

I have referenced ***Black's Law Dictionary, sixth edition***, which defines interfere, in part, as:
"To check; hamper. Hinder; infringe; encroach; trespass; disturb...to enter into, or take part in, the concerns of others."

There is no evidence before me of any significant inference that occurred as the result of the tenant or his guests. There is no doubt that the occupant living below the tenant has been disturbed, however; I find that the disturbance is the result of the sounds of normal day to day living that resonates through this older, wood-framed building. The people living in the upper unit had issues dating back four years and I find the allegations they made are just as likely due to the character of this older wood-framed building.

I find that an unreasonable disturbance would be one which was senseless, foolish, irrational, unwise or absurd, as defined by ***Black's Law Dictionary***; that includes a "danger; hazard; peril." There was no evidence before me of any behaviour that would support these kinds of actions on the part of the tenant.

I found the landlords' testimony reliable but that the Notice was based, in part, on unsubstantiated allegations. There was no evidence before me that the tenant invited people into the stair way or that the person in the yard was known to the tenant.

The presence of bikes on the property is not sufficient reason to end a tenancy, but a minor issue that can be dealt with through written instructions issued by the landlord.

There was no evidence before me the tenant is dealing drugs and no evidence of any police interaction with the tenant, save the one time on August 31, 2015 when they went to the unit and apparently woke the tenant up. There was no evidence before to the contrary.

On the balance of probabilities I find it is just as likely it was the tenants' son that the occupant saw enter the tenants' unit without using a key. There is nothing that supports eviction when the tenant chooses to leave his door open for someone to enter the unit.

The tenant was not afforded the opportunity to cross-examine the one occupant who has made the majority of complaints against the tenant. The presence of the individuals who complained would afford an opportunity to ask questions of the accusers.

Therefore, in the absence of evidence to support the reasons on the Notice ending tenancy, as set out above, I find that the Notice issued on June 23, 2015 is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

The landlord's application is dismissed.

Conclusion

The 1 month Notice to end tenancy for cause issued on June 23, 2015 is canceled.

This decision is final and binding and 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 04, 2015

Residential Tenancy Branch

