



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the 1 Month Notice to End Tenancy for Cause ("Notice") issued by the landlord and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The landlord's witness, "CM", was present at the inception of the hearing; however, he was excused until his participation was required. The other witnesses dialed into the hearing when their participation was required.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence; the tenant confirmed that she had not provided evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice issued by the landlord and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted without dispute that this tenancy began on October 1, 2012. The evidence showed that the rental unit was one of a 44 unit townhome style complex and that the tenant's rental unit is joined with one other rental unit, which is CM's unit.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated June 29, 2015, was served to the tenant by attaching the Notice to the tenant's door on that date, according to the landlord, and listed an effective end of tenancy of July 31, 2015. The landlord submitted a copy of the Notice.

Section 90 of the Act states that documents served by attaching them to the door are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on July 2, 2015, and the effective move out date on the 1 Month Notice is automatically changed to August 31, 2015, pursuant to section 53 of the Act.

The causes listed on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and a security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord confirmed that the second cause listed on the Notice was not a reference to a requirement of the tenant to pay a pet damage deposit; rather, the clause referred to pertained to restrictions on pets. I have therefore not considered this listed cause. The hearing proceeded on the landlord's allegation that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of their Notice, the landlord submitted that they have received numerous noise complaints from CM about this tenant and her family, including unreasonable volumes from the tenant's television and stereo. The landlord submitted copies of the written complaint from CM, one received by the landlord on October 6, 2014, one received March 31, 2015, and on May 25, 2015, along with a letter from the landlord cautioning the tenant about the noise levels. The letters and the landlord's testimony showed that CM also complained of animal excrement in his yard, which CM claimed was from the tenant's pets. Pictures of the excrement taken by CM were submitted into evidence.

The landlord submitted that although she is a resident manager, she does not live on-site; after receiving the last complaint from CM by email, she asked the maintenance person, witness "RM", to attend CM's rental unit to gauge the level of noise coming from the tenant's rental unit, with RM reporting that the noise was very loud.

The landlord confirmed that the tenant should keep quiet both day and night, as CM and his spouse work differing schedules, with CM's wife working at night and needing to sleep during the day.

In response to my question, the landlord stated the age of the townhome complex was in the 1988 era, and that she did not know if there was soundproofing between the adjoining walls.

Testimony of landlord's witness, RM-

RM confirmed that he heard the noise from the tenant's rental unit before entering CM's unit on the day in question, June 19, 2015, and that he heard the loud noise, or music, when he was in CM's rental unit. The occurrence was mid-morning.

RM stated that he had heard there was a "history" between the tenant and CM and that they do not talk to each other.

RM submitted that he had heard loud music just last week caused by CM's playing a "boombox" outside his rental unit when he was working on a car on his driveway, submitting further that he was on his way to talk to CM about the noise level when he noticed that CM's wife had spoken to him.

RM, who submitted that he has had many years' experience in building and property maintenance, stated that due to the age of the building, it was likely that only drywall was between the tenant's and CM's rental units, no soundproofing.

Testimony of landlord's witness, TE-

TE, the landscaper/cleaner for the townhome complex, confirmed she heard the loud music coming from the tenant's rental unit and that she has received complaints from other tenants in the complex.

TE stated that of the 44 rental unit, she has only heard loud music from this tenant's rental unit.

Testimony of landlord's witness, CM-

CM submitted that the tenant tends to crank up the music late at night and that the music stays on a long while. CM also submitted that he has had an issue with the tenant's cats being in his yard and leaving excrement.

CM submitted that he has lived in the complex for 11 years, and that when the tenant moved in in 2014, he heard booms coming through the walls.

CM agreed that he and his wife require quiet hours both during the day and night, but that the noise level from the tenant exceeded a normal level.

CM denied there is a "history" between the tenant and him. CM denied that he was working in his driveway, that he was playing loud music, or that he owned a "boombox".

CM confirmed that he has heard loud noises from another rental unit, which is occupied by a friend of his in unit 44, and that he, CM, has screamed at his children.

Tenant's response-

The tenant submitted that CM is being unreasonable in his expectations as to having no noise from the rental unit, as she and her family are only living as a family would, making every day noise. The tenant submitted there has to be some concession of noise, as she has a family and CM has a family, and that the noise goes both ways, as she is able to hear the tenant and his family when they are only walking around in their rental unit, without complaint to the landlord. The tenant submitted that the buildings were old.

The tenant denied that she owns a stereo; rather she has a 10 year old computer with speakers. The tenant submitted that she only plays her music when she cleans for approximately 45 minutes and then turns it off.

The tenant submitted that once when CM had gone for a period of time, CM had given the keys to his rental unit to his friend in unit 44 to look after his home. According to the tenant, she asked the tenant in unit 44 to go inside CM's rental unit to gauge the level of noise, so that she could understand what noise CM may be hearing. CM's friend heard only the bass sounds, according to the tenant, which led the tenant to disconnect the "subwoofer" from her computer to reduce the effects of her music.

The tenant submitted that her husband, who enjoys watching television at night to help him sleep, has now been sleeping in their daughter's bedroom, so that CM does not hear television sounds at night, as their bedroom has an adjoining wall with CM's rental unit.

The tenant submitted that her dog, of which the tenant has complained, does not create any disturbance with barking, as she is with her small dog all day long, and that there are cats all over the complex, so there is no proof any excrement came from her cats.

Analysis

Based on the foregoing evidence, and on a balance of probabilities, I find as follows:

Under section 47(1)(d)(i), a landlord may issue to the tenant a notice seeking to end the tenancy if the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, as is the case here.

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to support the cause(s) listed.

I grant the tenant's application and cancel the 1 Month Notice to End Tenancy for Cause, dated June 29, 2015, as I find that the landlord has not presented sufficient evidence to demonstrate that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

In making this determination, I found the evidence of the landlord and their witnesses to be contradictory and therefore, not reliable. For instance, TE, the resident caretaker stated she had not heard any noise from other rental units, yet CM stated that he has heard loud noise from other rental units. Considering the age and composition of the townhome complex, I found TE's statements that she does not hear noises from other tenants or rental units to be questionable.

Additionally, RM said he observed CM making excessive noise with his "boombox" outside his rental unit, and CM denied owning a "boombox" or that he was making excessive noise.

Further RM stated he had heard there was a "history" between the tenant and CM; yet CM denied this statement. I took the word "history" to mean that there had been or are issues between the tenant and CM.

I also took note that the tenancy began in October 2012; yet CM stated the tenant moved into her rental unit in 2014.

I also took into consideration the age and composition of the two adjoining rental units of the tenant and CM. From the evidence of the landlord and RM, it appears likely that there is very little, if any, soundproofing between the rental units, which I find it to be reasonable that sound transference between the rental units to be enhanced, if not magnified. I found that CM's expectation that there be no noise from the tenant's rental unit both day and night, due to his and his wife's work schedules, to be unreasonable, and I therefore gave less credibility to CM's complaints.

I also was persuaded by the tenant's testimony, with sufficient detail, that she has altered her lifestyle in an attempt to reduce the effects of noise coming from her rental unit, such as disconnecting the "subwoofer" and having her husband sleep in another room. The tenant's testimony persuaded me that there is noise heard by both sets of tenants, this tenant and CM, and that much of the noise was in everyday living, not rising to the level of ending a tenancy.

Due to the above, I find the landlord submitted insufficient evidence to support that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated June 29, 2015, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, and the tenancy will continue until ended in accordance with the Act.

I allow the tenant recovery of her filing fee of \$50.00, and direct that she deduct this amount from her next or a future month's rent payment in satisfaction of her monetary award. The tenant should inform the landlord when she is making this deduction.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to deduct \$50.00 from a future month's rent payment in satisfaction of her monetary award for recovery of the filing fee.

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 7, 2015

Residential Tenancy Branch

