



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SESTO HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on June 26, 2015.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The parties confirmed receipt of all evidence submissions. The landlord objected to the five pages that were submitted by the tenant on August 26, 2015. However, I have reviewed the evidence and it appears to be rebuttal evidence as the landlords' evidence was filed on August 16, 2015. As the tenant's evidence is relevant, the landlord was given an opportunity to adjourn the matter for review. The landlords did not want an adjournment and the hearing proceeded with all evidence that was submitted.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on June 26, 2015, be cancelled?

Background and Evidence

The tenancy began on March 1, 2015. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on July 31, 2015.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent testified that immediately after the tenant moved into the rental unit they received complaints about the tenant's television being too loud. The agent stated that although they have tried to have the tenant rectify the problem, the tenant's behavior continues even after the Notice was issued.

The landlord's agent testified that on March 4, 2015, they received the first complaint and they sent a text message to the tenant notifying them of the complaint. The agent stated that the tenant responded indicating that they do not have a television in their room, but do have speakers that their computer is plugged into. Filed in evidence are text messages marked "1" and "2".

The landlord agent testified that on April 12, 2015, prior to 7:30am the tenant was again playing the volume on their computer too loud. The agent stated that they knocked on the tenant's door to ask them to turn it down; however the tenant did not answer the door. The agent stated they then sent the tenant a text message at 7:26am notifying them that they were at the door and to turn the volume down. The tenant responded "Really? Sorry I didn't hear you. I will keep it lower on Sunday mornings". The tenant was then notified by the landlord that volume needed to be kept lower not just on Sunday mornings. Filed in evidence are text messages marked "6", "7" and "8".

The landlord's agent testified that on May 31, 2015, they received a further complaint from the renter below the tenant's unit, regarding the excessive noise coming from the tenant's unit. Filed in evidence is a letter dated May 31, 2015, marked "9".

The landlord's agent testified that on June 2, 2015, they received another complaint of excessive noise from a renter which is located on the same floor as the tenant. The agent stated that they attended the rental unit and found the noise was excessive. The agent stated when they knocked on the tenant's door to ask them to turn it down, again they did not answer. However, shortly after the noise stopped. Filed in evidence is a letter of complaint dated June 2, 2015, marked "10".

The landlord's agent testified that the tenant has been advised on several occasions that they are disturbing other renters and have chosen not to rectify the problem. The agent stated that on June 3, 2015, the tenant was provided with written warning that if the noise did not stop immediately that they will have no choice but to take further action. Filed in evidence is a letter from the landlord dated June 3, 2015.

The landlord's agent testified that they have received further letters of complaints from both the renters, which have indicated the noise has not stopped and is impacting their health and impacting their relationship with their partner. The landlord's agent stated both tenants have indicated that if the noise continues they will end their tenancy. Filed evidence are letters marked "15", "16, 17, 18, 19" "25," and "31".

The landlord's agent testified that they continued to receive further complaints and on June 23, 2015, they gave the tenant a final warning letter that any further complaints they would be ending the tenancy. Filed in evidence is a copy of the letter.

The landlord's agent testified that they received another complaint on June 26, 2015, of excessive noise. The agent stated they attended the rental unit at 12:15 am and again found the noise to be excessive and when they knocked on the tenant's door the tenant again did not answer, so they sent another text message. The agent stated that the tenant responded at 12:46, that it was not too loud and they don't pay 750 to live in mausoleum. The agent stated they had no choice but to issue the notice to end tenancy. Filed in evidence are text messages "21" "22" "23" and "24". Filed in evidence is a copy of the notice to end tenancy.

The landlord's agent testified that even after receiving the Notice the tenant has continued to disturb other renters, as an example on June 27, 2015, the tenant was again causing excessive noise. The agent stated they went to the tenant's unit and stood outside their door and rather than knock they sent the tenant a text message to turn down the television or radio as it is way too loud. The agent stated the tenant responded at 2:26 am that it was not on. Text messages marked "32" and "33".

The tenant testified that they did not receive the letter dated June 3, 2015. The tenant stated that the structure of the building is made of wood and you can hear everything between the units.

The tenant testified that it was impossible for them to have made noise on June 2, 2015 as they were out of town. Filed in evidence is a copy of a bank statement showing a withdrawal made out of town.

The tenant testified that the landlord did not give them sufficient particulars of who was issuing complaints. The tenant acknowledges receiving the final warning letter date June 23, 2015.

The landlord's agent responded that even though the tenant has provided evidence that their bank card was used in another location. It was either loaned to their girlfriend or they had someone else in the rental unit as they personally witness the noise and again the door was not answered; however the noise stopped shortly after.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy if the tenant. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case the tenant had been warned by the landlord's on several occasions by text messages that the noise coming from their rental unit was excessive and unreasonably disturbing other renters, a final warning letter was issued on June 23, 2015.

The landlord's agent attended the tenant's rental unit on several occasions prior the Notice being issued and witnessed the excessive noise. On each of these occasions the tenant failed to answer the door when the agent was attempting to rectify the tenant's behaviour.

Further, the landlord's agent would then send a text message to the tenant at the time and the tenant would respond very quickly. This action leads me to believe that the noise was so loud that the tenant could not hear the landlord's agent knocking on the door as there would be no other reasonable reason not to answer the door.

While the tenant alleged they were not home on June 2, 2015, as they have evidence of a purchase made in another town on their bank card. However, the tenant did not provide any explanation on how it was possible for the landlord to be outside their rental unit and listening to the excessive noise, which shortly stopped after the landlord, knocked on the door. Even if the tenant was not home, they are responsible for all actions of their guests.

On June 23, 2015, the tenant acknowledged receiving a warning letter from the landlord. On June 26, 2015, the landlord received another complaint and attended the tenant's rental unit at 12:15 am, and again found excessive noise. The tenant again did not respond to the landlord's knocking. The tenant did respond to the landlord text message indicating that the volume was not too loud and they don't pay to live in a mausoleum. I find the tenant's action of not answering the door at 12:15 am and the respond that they don't live in a mausoleum leads me to believe the level of noise was excessive and the tenant had no intent of correcting their behaviour.

In this case, the reason the Notice was issued was the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the tenant was provided sufficient warnings by the landlord's agent to correct this behaviour. The tenant continued to unreasonably disturb the other occupants in the rental building with excessive noise.

I find the Notice issued on June 26, 2015, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to the cancel the Notice. Therefore, I find the tenancy legally ended on July 31, 2015 and the tenant is now overholding the rental premises.

As the tenancy legally ended on the effective date of the Notice, I find to give force and effect to the Notice; the landlords are entitled to an order of possession, pursuant to section 62(3) and 55 of the Act, effective **two days** after service on the tenant.

Conclusion

The tenant's application to cancel the Notice, issued on June 26, 2015 is dismissed.

The landlord is granted an order of possession

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 14, 2015

Residential Tenancy Branch

