



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE SOCIETY- TAYLOR MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC FF

Introduction

A Notice to End Tenancy for cause dated August 26, 2015 to be effective September 30, 2015 was served by posting it on the tenant's door and the landlord confirmed they received the tenant's Application to dispute the Notice. I find the documents were legally served for the purposes of this hearing. The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) to cancel the Notice.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Preliminary Issue:

The tenant submitted approximately 11 letters from friends and other tenants in support of him. The outreach worker confirmed he had written these form letters and tenants had signed them but he had not submitted this evidence to the landlord. I will not consider this evidence in my Decision as the landlord has had no opportunity to read and respond to it as required by the Residential Tenancy Branch Rules of Procedure 3.14.

Background and Evidence

Both parties attended the hearing and witnesses were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in April 2015, rent is \$475 a month and a security deposit of \$237.50 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- b) The tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardizes the security, safety or physical wellbeing of another occupant or the landlord.
- c) The tenant has breached a material term of his tenancy agreement.

The landlord provided several incident reports completed by staff and two noise complaint forms in evidence. One incident report was dated August 15, 2015 involved loud noisy screaming involving this tenant and two others on the third floor, another on August 26, 2015 said staff

responded to a noise complaint at 1 a.m., confirmed it was from this tenant's room, knocked on his door and he slammed it in staff face and began pounding on his neighbour's wall and using foul language. An incident report dated July 23, 2015 noted this tenant and another were yelling in the hall. A neighbouring tenant who came to the building in June 2015 wrote a summary of his complaints about noise and gave oral evidence. He said he has been unable to sleep at night for the tenant plays music with very loud bass which reverberates on the wall and his bed; the music lasts from half an hour to all night. He said he has tried earplugs and other devices but nothing blocks it. He said the noise has escalated in August to banging as well which he speculated was from hammering or playing video games at 5 a.m. He said there have been a dozen or more incidents from 11 p.m. to 7 a.m. so he made a summary of complaints to the landlord. In reply to the tenant, he said that the noise is not coming from overhead, he feels the wall vibrating between his and the tenant's unit and the staff have verified the noise comes from the tenant's unit when he has made a complaint. The tenant denies responsibility for the noise.

A witness for the tenant said she has stayed overnight in the tenant's unit and provided a number of dates in September and October when she stayed. She said there has not been loud noise from the tenant's unit but sometimes when she is out with a dog, she hears loud noise from the tenant above this tenant's unit. She says she hears tenants above her but not on either side. The tenant said that he is deaf in one ear so maybe speaks loudly or plays his TV a bit loud but he denies the loud noise alleged by his neighbour.

The landlord also provided a letter from a tenant alleging this tenant was dealing in drugs and saying he would have to move as it is dangerous for him as he is in recovery. He has since moved out. The landlord also said the surveillance cameras have shown some activities of the tenant that are suspicious. They have shown him putting things in his suite illegally through his window and thus bypassing their policy of pest control. The tenant said his window is too small for that but a staff person said it is big enough to take items like backpacks. The landlord also said the cameras showed him walking around outside very late, burying something in bushes, then looking around and retrieving it about 10 minutes later. He noted they have had several complaints from tenants who wish to remain anonymous stating the tenant is dealing drugs. The tenant denies he is doing anything illegal and notes he has never had drug charges in his life. A tenant across the hall from this tenant said he is friendly with the tenant, he has no problems with him; he knows he does not deal drugs but others beg cigarettes from him.

The tenant's advocate said that most tenants in this building have problems and many exhibit strange behaviour which does not necessarily mean they are engaging in illegal activities. She said this is supportive housing and she is surprised there has not been more support for the tenant.

The landlord said they have sent warning letters to the tenant and given verbal warnings to him but they have to comply with section 28 of the Act and ensure peaceful enjoyment and protection of their rights to the other tenants. He said they tried to work with the tenant but the breaking point was when staff tried to intervene after hearing and confirming the noise which

was the subject of the complaint by another tenant. This tenant's response was to slam the door in the face of the staff and start banging on the adjoining wall and screaming foul language at the complaining tenant. They request an Order of Possession if the tenant is unsuccessful.

After negotiation through the advocate, the landlord agreed they would accept an Order of Possession effective December 1, 2015 and promised they would reconsider extending enforcement to December 31, 2015 if the tenant exhibits good behaviour. The landlord is concerned particularly about possible retaliation and protection of the vulnerable tenants.

Included with the evidence are incident reports, the tenancy agreement, complaints and statements of parties and witnesses.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant or the landlord. An adjoining tenant and several staff reports state there is late night noise, arguing and banging and when a staff person tried to intervene, the tenant just escalated his behaviour to banging on the wall and yelling rude comments to the adjoining tenant. I find the weight of the evidence is that this tenant significantly disturbs the peaceful enjoyment of other tenants in the building as they are kept awake by the yelling and arguing. Although the tenant said he is deaf in one ear, I find this is not sufficient reason to excuse behaviour that is so disturbing to other occupants. I find the evidence of the female tenant witness who said she had spent quiet nights with him is not relevant for all the dates she quoted were after the Notice to End Tenancy. I also give less weight to her evidence as she is a close friend of the tenant and said several times that she wants to support him. Likewise, I find the evidence of the neighbour across the hall is mainly opinion evidence and he had not observed the incidents in question. While he may not be disturbed by the bass noise, I find the evidence of the adjoining tenant credible that it is very disturbing when a wall is shared.

Although I find there were some indicators of suspicious behaviour of the tenant, I find insufficient evidence that he is engaged in the illegal activity of drug dealing. However, I find the evidence of staff that he is putting items through his window in contravention of their screening policy for pest control is credible as they observed this through video surveillance.

I find sufficient evidence that the tenant has materially breached his tenancy agreement section 19 based on the noise complaints and incident reports of staff.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on September 30, 2015 and the landlord is entitled to an Order of Possession as requested for December 1, 2015.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 30, 2015 (as corrected). An Order of Possession is issued to the landlord effective December 1, 2015. **I note the landlord has agreed to possible extension of enforcement of this Order to December 31, 2015 if the tenant exhibits good behaviour.**

The ORDER of Possession must be served on the Tenant and may be filed and enforced in the Supreme Court of British Columbia.

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: November 05, 2015

Residential Tenancy Branch

