



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC MNDC LAT RR OPC

Introduction

Both parties and many witnesses were present at this hearing. The hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause dated September 29, 2015 to be effective October 31, 2015 pursuant to section 47;
- b) To compensate the tenant by refund of rent or rent rebate for the persistent disturbance of his peaceful enjoyment contrary to section 28 of the Act and for services not provided and repairs not done; and
- c) To authorize the tenant to change the locks pursuant to section 31 and that the tenant's guests be allowed access to the property pursuant to section 30.

The tenant confirmed he was served with the Notice to End Tenancy by posting it on his door on September 29, 2015. As pointed out to the parties in the hearing, the effective date on the Notice is automatically corrected to November 30, 2015 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find these documents were legally served for the purposes of this hearing.

Preliminary Issue: Adjournment

The tenant alleged he was not served with the landlord's evidence. The landlord gave evidence supported by a witness that she attempted to serve the large amount of documents to the tenant. There was a female inside who would not answer the door so they left the documents in front of his door. The documents were there for 3 days. The tenant requested an adjournment to get the documents. Pursuant to my authority under section 71(2) (c) of the Act, I find the evidence was sufficiently served for the purpose of this hearing. I refuse to grant the adjournment as I find an adjournment is unlikely to result in a resolution and based on the evidence, would result in considerable prejudice

to the landlord as one suite is not rentable while the tenant is living above it and the manager is living in stress and fear. I find the need for the adjournment arises out of the tenant's refusal to take the documents by his door and is not necessary to provide a fair opportunity for the tenant to be heard. Many of the persons who wrote the letters in the evidence gave oral evidence in the hearing and the tenant had an opportunity to hear them and cross examine them. The tenant requested that the manager's assistant deliver to him another copy of the evidence submitted by the landlord to help him prepare his case for the Supreme Court; the manager consented.

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?

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2012, it is now a month to month tenancy, rent is \$850 a month and a security deposit of \$425 was paid. The landlord served a Notice to End Tenancy for the reason that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

The landlord provided many letters in evidence concerning the noise made by the tenant or his children. A breach letter warning of noise dated August 13, 2015 and one dated September 22, 2015 were given to the tenant. Also, one dated September 23, 2015 concerned disturbance, harassment and annoyance of neighbours. The tenant said he received these letters but classified them as just preparation by the landlord to end his tenancy. One tenant in September 2015 writes he lives downstairs and can't hear his TV and his wife can't do homework because of the noise from this tenant's children; he says when he complains, it gets better for a few days and then starts again. Another tenant who was present in the hearing writes his children made excessive noise on September 19th and 20th, 2015. She wrote another letter saying the tenant has left notes on her door making wrong accusations and has called the Police on her family alleging domestic disputes and physical abuse which are unfounded as her husband was at work. The same tenant wrote a complaint again on October 30, 2015 but as this is past the time of the issuance of the Notice, this will not be considered as evidence to end the tenancy. Another tenant writes on May 28, 2015 that the tenant and his children who live upstairs make too much noise at all times of the day and night, including TV noise and children banging around. She said she decided to move as she felt her health and safety were at risk.

The manager wrote a statement and testified in the hearing of the tenant's violent reaction to a Notice to End Tenancy for unpaid rent on May 7, 2015 when her minor son was in her unit. Her son was frightened and Police were called. The tenant yelled about the 10 day Notice and the Police advised the Manager to take it to the Residential Tenancy Branch. However, as soon as the Police left, the manager said the tenant was pounding on her door and yelling again. The account of this incident was verified by two of the witnesses in the hearing and by a letter from her son who also relates how the tenant continues to harass his family. Another tenant writes that on May 7, 2015 he witnessed the tenant swearing and making a disturbance in respect to the 10 day Notice to End Tenancy. The manager recounted how the tenant continued to yell, threaten her with loss of her job and call her rude names. She said he called the WCB stating falsely the boiler had exploded and when the inspector came, the tenant kept following and harassing her with cameras in her face and media attention. Some painters made a statement dated June 10, 2015 that they were witness to the tenant eavesdropping on the landlord's conversation with them behind her entry door, then asking her questions, threatening her and saying her days were numbered. Statements from the landlord indicate the tenant called the Ministry of Children and Families regarding her son working under her supervision (he is 14 and she said it is legal), also note the Police were going to issue him a criminal harassment warning on June 16, 2015, note he has called City Inspectors, news crews, pest control agents and fire safety contractors and posted derogatory comments about her online. She says she lives with stress and fear, unable to relax even at night. In addition, the landlord states the tenant's balcony is enclosed which contravenes fire and safety regulations.

The landlord said the unit immediately below the tenant's unit has become un-rentable because of the noise. They had to move the former tenant for she could not stand the noise. This tenant was at the hearing and confirmed this evidence. The landlord said she showed it twice recently and both parties declined based on the noise from above.

The tenant states that the Notice should be set aside because he is being targeted as he is an activist and is addressing issues in the building. He referred me to a previous hearing where he said the arbitrator concluded that. He said he has a case going to the Supreme Court for harassment and other issues and is considering a class action. As he has the Supreme Court case, he said he did not want to discuss his monetary claim for \$2000. He will pursue it instead at the Court.

He said there was no mediation after the Breach letters were given to him. He said after the suite inspection notice, the Police told the manager to let her assistant serve notices because he gets along well with the assistant. He said all the Notices were

served in a flurry of time because he is an activist. The tenant's witness said she lives next to the manager and the manager sometimes harasses her to get to the tenant. She said any noise is from the tenant's children, she can hear it in the hallway but it is an old building. She said she does not complain. In reply, the manager said she had served this female tenant one breach letter because she was blocking a window; she moved the article and it has been fine since.

The manager and the assistant said that they pass on all complaints to the landlord and follow the landlord's instructions regarding issuing notices and breach letters. They do not pick on a tenant. There was a disagreement about keys and access to the tenant's unit; the tenant said there was a duplicate key hanging in the office. 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 cause 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. Three tenants in sworn testimony supported the manager's evidence that the tenant and his children are causing excessive noise in the building and harassing the manager. I find the noise caused one tenant to move to another suite and the manager cannot rent it again due to the excessive noise as it is below this tenant's suite. Even the tenant's own witness notes she can hear the noise from the tenant's children in the hallway. While it might not bother her, I find the noise is excessive and disturbs a large number of tenants. I find insufficient evidence that the manager is targeting her; I find it credible that the manager issued her one breach letter because of a window obstruction and this is within her duty as a manager.

Although the tenant alleged the manager was targeting him, I find insufficient evidence to support his allegation. He referred me to a previous hearing where he made the same allegation. In examining that Decision, I find the arbitrator specifically disagreed that the landlord was trying to evict him because of his advocacy within the building. The arbitrator stated, "This is a situation where the Notices to End were given because of the tenant's misconduct". I likewise disagree that the evidence shows the landlord is targeting him and I find the current Notice was issued due to his or his children's misconduct. The other Notices referred to unpaid parking charges and cause. They were set aside for some issues with evidence such as some incidents occurred after the

date of the Notice to End Tenancy. I find evidence of many more incidents after the May 7, 2015 date of the last Notice to End Tenancy and before September 29, 2015 which is the date of the present Notice to End. The administrator testified at the hearing that the manager is following the instructions of the landlord and the tenant should not be blaming her for doing her job.

I find the preponderance of the evidence in this case today is that the tenant is significantly interfering and unreasonably disturbing the peaceful enjoyment of other tenants and the manager who is also a tenant in the building.

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 November 30, 2015. No filing fee was involved. Pursuant to my authority under section 55 of the Act and the landlord's oral request at the hearing, I find the landlord entitled to an Order of Possession. In consideration of the fact the tenant has young children, I grant the Order of Possession effective December 31, 2015.

As the tenant did not want to continue with his claim for compensation of \$2,000 as he is reserving it for the Supreme Court, I make no finding on it. I find insufficient evidence to support his request to change locks or for a rent rebate. I dismiss this portion of his claim.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on November 30, 2015 (as corrected). An Order of Possession is issued to the landlord effective December 31, 2015.

In response to the tenant's request and the manager's agreement:

I HEREBY ORDER that the manager's assistant give another copy of the landlord's documentary evidence from the hearing to the tenant as soon as possible.

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: December 10, 2015

Residential Tenancy Branch

