Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

By an application dated October 16, 2015, tenant applies to cancel a one month Notice to End Tenancy for cause received by her on September 28, 2015. She seeks an extension of the statutory ten day application period.

The Notice alleges that the tenant or a person permitted on the premises by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. If established with evidence, such conduct is a permitted ground for eviction under s. 47 of the *Residential Tenancy Act* (the "*RTA*").

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that fairness dictates that the time for the tenant to apply be extended? If so, does it establish that good cause has been shown to end the tenancy on statutory grounds?

Background and Evidence

The rental unit is a one bedroom apartment in a public housing apartment building containing 19 other rental units.

The tenancy started August 1, 2015. The monthly rent is $725.00. With government assistance, the tenant is required to pay $375.00 of that amount. The landlord holds a $362.50 security deposit.

The tenant testifies that she was unable to make this application within the mandatory ten day period following receipt of the Notice because she had been hospitalized for a week commencing October 1st for detoxification from drug abuse. She indicates that on her release she was housed in a "stabilization" facility until November 7th.

The landlord's representative Mr. P. testifies that on August 12th, the landlord received a complaint from another resident, Mr. S.T. that a guest of the applicant tenant had interrupted his sleep at 5:00 o'clock a.m., by buzzing the intercom to his rental unit.

Mr. P. notes that he spoke to the tenant the next day about "noise complaints" and received her assurance and apology.

Mr. P. adduced a signed email message dated August 20th from another occupant of the building, Ms. E.B., complaining that her neighbours (indicating the tenant's rental unit) had kept her up most of the night with noise and what sounded like moving furniture or "a herd of elephants."

On August 21st the landlord wrote to the tenant that it had received more complaints about noise coming from her unit and her guest disturbing other occupants. No details were given in the note.

On September 27th the landlord received a second email from the tenant's neighbour Ms. E.B. stating that there had been a lot of noise the night before and that she could not sleep due to the yelling and loud noises. She assumed there had been an argument because, she says, two police cars showed up. She indicates she had been talking to other tenants and they are also bothered by the noise from the tenant's apartment.

The next day the landlord issued the Notice in question in this proceeding. Service was accompanied by a letter from the landlord setting out the August 13th telephone discussion, the noise complaint from August 20th and the fact of another complaint of noise on September 27th.

The landlord also presented a handwritten note from Ms. J.G., another occupant of the building, dated October 30th. The note states the tenant has been "nothing but trouble," that the police were called because of the tenant's "loonie tune junkie friends" fighting

and yelling and that the police had been there “numerous times.” She has seen the tenant high on drugs and that the tenant’s friends buzz the wrong apartments or try to sneak into the building. She thinks the tenant’s friends are responsible for “the door constantly getting busted” and that they “pissed and puked” on carpets.

In response to the evidence in support of the Notice, the tenant testifies the police attended once in early August in response to an assault committed on her by her ex-boyfriend, who has not returned. She says that there was a door buzzing incident when friends of a different ex-boyfriend tried to get into the building.

She denies that the police attended in September as alleged by Ms. J.G. in her note.

The tenant admits that she is a drug addict. She says that she has now gone sixty days without using drugs and is actively pursuing a drug free lifestyle.

Analysis

The tenant’s application was submitted sixteen days after receiving the one month Notice and issued the next day. It is un-contradicted that seven of those days were spent in hospital. The landlord has not shown that any particular hardship to it would result from an extension of time. It has not, for example, re-rented or promised the rental unit to another in reliance on the tenant’s failure to apply within the statutory ten day period.

In these circumstances, I grant the tenant an extension of time to make this application.

The fact that a tenant is a drug addict is not in itself a reason to end a tenancy.

Equally, it is not the purpose of a Residential Tenancy arbitrator to participate in or facilitate the recovery of a tenant in the process of recovery from the disease of addiction. She is responsible for her conduct and the conduct of her guests.

The issue is whether or not the conduct of the tenant or a person permitted on the premises by her significantly interfered with or unreasonably disturbed another occupant or the landlord. The facts relevant to that determination are the facts in existence as of the date of the Notice. Occurrences after that date cannot support the Notice. Occurrences before that date, but unknown and then discovered after the Notice can be used in support of the Notice.

That having been said, the ending of a tenancy is a serious matter. An adjudicator will be justified in scrutinizing evidence with greater care and consider the cogency of it if serious allegations are to be proved by it. This is not a departure from the "balance of probabilities" standard.

The evidence shows that it is likely that a person familiar with the tenant disturbed another tenant by buzzing the wrong entry address at the front door to the building in the early morning hours. It is not apparent that the tenant was aware of it or that the person was someone invited by the tenant or someone who had an implicit invitation to come to her rental unit. It is not apparent that there was a reoccurrence after the landlord's warning. It is not clear from the scant evidence that the intrusion was of an extent that would take a possibly minor disturbance to the level of an "unreasonable" disturbance as required for eviction.

The complainant Ms. E.B. relates two instances of disturbance, the first on August 19th or 20th, the second on September 26th. Both allege loud noise from the apartment rented by the tenant. Unfortunately, Ms. E.B. was not called to give evidence. It was not demonstrated how she determined the noise was coming from the tenant's apartment. Nor is there any indication about the frequency or time(s) of the noise or other possible indicia from which one might objectively conclude that she had been unreasonably disturbed. From her emails is reasonable to speculate that Ms. E.B. was unreasonably disturb by the goings on in the tenant's apartment, but speculation is not fact and cannot support the ending of a tenancy.

I conclude that the evidence presented has not established on a balance of probabilities that the tenant Ms. E.B. was unreasonably disturbed.

The handwritten letter from Ms. J.G. dated October 30th suffers from similar shortcomings. Much of it is opinion, which is not of assistance in this matter. She does not allege that she has been a witness to any of the incidents referred to or that she was disturbed by any of them. She does not indicated the date or time of any particular incident. She does not indicated the basis upon which she concludes that the police were summoned in early September because of this tenant. Again, the letter gives good reason for speculation that the tenant or her guests have disturbed other occupants. Speculation is a standard far below that required to justify the ending of a tenancy.

For these reasons I find that the landlord has not presented sufficient evidence at this hearing that the tenant or a person permitted on the property by her has unreasonably

disturbed another occupant or the landlord. I therefore grant the tenant's application and cancel the Notice.

It should be made clear that this decision does not decide that the events alleged did not occur or that other occupants were not unreasonably disturbed. Only that the evidence presented does not establish those facts on a balance of probabilities. Should similar incidents arise and should the landlord present more cogent evidence of it, the result could well be different.

Conclusion

The application for more time to apply is granted.

The application to cancel the one month Notice to End Tenancy dated September 28, 2015 is allowed. The Notice is hereby cancelled.

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 05, 2015

Residential Tenancy Branch