Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 2, 2016 ("1 Month Notice"), pursuant to section 47; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

The landlord and her agent, JO (collectively "landlord") and the tenant and her agent, LT (collectively "tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The two landlords confirmed that they were the regional and maintenance managers for a landlord company that manages the rental building and that both had authority to speak on behalf of the landlord company as agents at this hearing. The tenant confirmed that her agent, who is also her mother and former co-tenant, had authority to speak on her behalf at this hearing. The tenant did not speak at all during this hearing, except to confirm the above authority for her agent. This hearing lasted approximately 117 minutes in order to allow both parties, particularly the tenant who spoke for most of the hearing time, to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence.

When the hearing concluded, the landlord exited the teleconference first and the tenant remained on the line to ask questions. I advised the tenant that I could not hear any

further evidence from her as the hearing had concluded and the landlord was not present. The tenant asked me if I could give her a "hint" as to who would be the successful party in this application and I advised her that was not an appropriate question and I had not yet made my decision. I told her that my decision would be issued in writing and mailed to both parties. She then proceeded to tell me that the landlord's evidence was served late, less than 7 days prior to this hearing. I advised her that she had not raised any objection to the landlord's evidence when I confirmed that she had received it at the beginning of this hearing and that I would not consider any objection now that the hearing had concluded. Accordingly, I considered the landlord's written evidence at the hearing and in my decision.

The tenant noted that she had not received breach letters from the landlord addressed to the tenant or letters from the upstairs tenants addressed to the landlord, during the tenancy, only with the landlord's written evidence for this hearing. However, the tenant did not dispute the contents of those letters during this hearing. The tenant also did not object to me considering the letters at the hearing or in my decision. Therefore, I considered the landlord's written evidence at this hearing.

The tenant confirmed receipt of the landlord's 1 Month Notice on February 4, 2016. She said it was slipped under her rental unit door by the landlord. In accordance with section 71(2)(c) of the *Act*, I find that that the tenant was sufficiently served with the landlord's 1 Month Notice on February 4, 2016, even though this method is not in accordance with the *Act*. I find that the tenant received the notice, as she filed her Application and written evidence to dispute this notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include a claim for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement. The tenant filed the appropriate amendment form prior to this hearing and the landlord received the form and the tenant's monetary order worksheet to support the tenant's claim.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on October 1, 2005. Monthly rent in the amount of $768.75 is payable on the first day of each month. A security deposit of $320.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of March 31, 2016, for the following reason:

- *Tenant or a person permitted on the property by the tenant has:*
    - *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord said that the tenant has made numerous and continuous noise complaints against the tenants living in the unit directly above her ("upstairs tenants") for three successive tenancies with three different groups of tenants. The landlord confirmed that the first two tenancies were ended by the upstairs tenants due to the tenant's noise complaints. The landlord said that the tenant has called the police about various noise complaints and that the majority of them have resulted in no police action being taken. The landlord said that the tenant's complaints are regarding reasonable noise that should be expected in a rental building, during daytime hours. The landlord provided letters, emails and summaries regarding the above information.

The landlord said that she has investigated complaints made by the tenant and that there is a 24-hour telephone line to report complaints in the building, not a telephone line closing at 4:00 p.m. as noted by the tenant. The tenant agreed that she had called the above telephone line to report complaints and that the caretaker had come to observe the noise from outside her rental unit, not inside. The tenant said that the caretaker then refused to hear complaints from her and that she had no choice but to call the police, while the landlord said she never told the caretaker to ignore the tenant and that it was likely a miscommunication.

The tenant said that she moved into this particular unit on the first floor in October 2014, although she used to live in another unit on the second floor prior to that date. She stated that there were no noise issues when she was living on the second floor. The

tenant noted that the rental building is three stories tall, 50-60 years old, wood frame and there are no carpets or sound barriers in the unit directly above the tenant's unit.

The tenant disputes the landlord's 1 Month Notice. She said that the landlord is attempting to evict her because she complains about noise made by the upstairs tenants. The tenant provided letters and emails regarding her noise complaints. The tenant said that the first call she made to the police resulted in one of the upstairs tenants being arrested. The tenant explained that she was told to call the police because there was continuous domestic violence during the first tenancy upstairs. The tenant said that during the second tenancy, there was very loud music and singing by the upstairs tenant. The tenant maintained that during this current third tenancy, the upstairs tenants are louder, make noise at all hours of the day and night, and do not speak English so she cannot tell them to quiet down.

The tenant seeks a monetary order of $1,404.91 from the landlord for registered mailing fees for her Application, school tuition fees and school supplies. The tenant provided receipts and printouts for the above costs. The tenant said that her doctor recommended that she withdraw from her school courses because of her anxiety issues. The tenant provided a doctor's note. The tenant noted that the landlord's harassment against her, the continuous noise from the upstairs tenants and the landlord's 1 Month Notice to evict her has caused a great deal of anxiety and panic attacks.

The landlord said that there are a lot of people in the rental building with anxiety and disabilities. She said that the landlord is not liable to pay for the tenant's school fees because the tenant's own emails show that school and issues with the tenant's common law partner have caused the tenant anxiety. The landlord noted that the tenant's email also refers to her partner's anxiety, which is not part of the tenant's claim at this hearing.

Analysis

1 Month Notice

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on February 4, 2016, and filed her Application on February 5, 2016. Therefore, she is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reason set out in the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord proved that the tenant significantly interfered with and unreasonably disturbed other occupants and the landlord.

While the tenant has found her neighbours' actions upsetting, her unsatisfactory interactions with her neighbours are not necessarily subject to intervention by the landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. The landlord described an appropriate process that the landlord has initiated to address this matter with the tenant's neighbours. I see insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about her neighbours. Both parties agreed that the landlord's caretaker has personally investigated many noise complaints made by the tenant. The landlord said that she has had conversations with the different upstairs tenants during three tenancies. The landlord said that she spoke verbally with the current upstairs tenants, despite the language barrier, and made clear that there were complaints against them regarding noise and they understood the landlord. The landlord said that these current upstairs tenants asked for a transfer to a new unit because they understand that the tenant has made numerous complaints against them and they are afraid to walk and live normally in their rental unit.

Living in a wood frame building causes greater noise transmission than a concrete building. The landlord said that the unit directly above the tenant's unit was renovated with laminate flooring and no carpets, but there was a ½ inch thick sound barrier. I find that the upstairs tenants are entitled to quiet enjoyment of their unit, including completing activities of daily living such as talking and moving around, and having guests over, singing, and other such activities. I find that the evidence produced by the tenant regarding the above noise is not unreasonable noise. I also find that the majority of the complaints made by the tenant were during reasonable hours between 10:00 a.m. and 11:00 p.m., as noted in the tenant's email of March 6, 2016. Because the tenant is home during the day, after leaving her schooling, she hears more noise now than she did before when she was away during the day at school.

I find that the tenant continuously complaining to the landlord and the police about the above reasonable noises being made by the upstairs tenants during reasonable hours is a significant interference and unreasonable disturbance against these other tenants and the landlord. I find that two other tenancies ended due to the tenant's constant noise complaints and the fear that other tenants have felt to live and enjoy their own

units is a significant interference and unreasonable disturbance against the upstairs tenants and the landlord.

Therefore, I dismiss the tenant's application to cancel the landlord's 1 Month Notice, dated February 2, 2016. I find that the 1 Month Notice complies with section 52 of the *Act*. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective ten (10) days after service on the tenant. The tenant is entitled to possession of the rental unit until at least March 31, 2016, as she has paid rent to the landlord for the entire month of March.

Monetary Claim

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

During the hearing, I advised the tenant that she is not entitled to recover registered mailing fees totaling $16.34 for her Application, as the only hearing-related fees recoverable under section 72 of the *Act* are for filing fees.

I dismiss the tenant's application for a monetary order of $1,388.57 for school tuition fees and school supplies, as I find that she failed to meet part 2 of the above test. I find that the tenant failed to show that the landlord is responsible for her costs. I found above that the landlord took reasonable action to remedy the situation with the tenant during three successive tenancies for the upstairs tenants. I find that the landlord is not responsible for the tenant's reaction to the 1 Month Notice and the legal process associated with it. The landlord is entitled to issue a notice to end tenancy and I found the notice to be valid, as noted above. The tenant chose to enforce her legal right to dispute the notice and ask for a hearing to determine the outcome.

I also find that the tenant's own evidence does not support her claim. The tenant's doctor's note states that the tenant was "unable to focus" and was suffering from "extreme fatigue." There is no reference to the landlord, anxiety caused by the landlord,

noise from the upstairs tenants, issues with the tenant's tenancy or any such related information. The tenant's own emails, both dated February 4, 2016, addressed to her mother indicate that there are other unrelated issues causing her anxiety, including her partner's issues and school stress.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **ten (10) days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of 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: March 23, 2016

Residential Tenancy Branch