Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seamont Investment Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, O

Introduction

The tenant applied for an order pursuant to section 47(4) of the Residential Tenancy Act: to set aside a Notice to End a Residential Tenancy dated February 29, 2016 with an effective date of April 30, 2016.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Notice?
Is the landlord entitled to an Order for Possession?

Background and Evidence

A hearing was conducted in the presence of both parties. Service of the application was admitted. Based on the evidence of the landlord's agent ES and admission by the tenant, I find that the notice to end the tenancy was personally served by the landlord on March 1, 2016 by posting it to the door on February 29, 2016. The tenancy began on November 1, 2008.

ES the resident manager testified that on February 27, 2016 at 10:00 PM she heard loud music in her apartment which she deduced was emanating from the tenant's unit. She approached the tenant's unit and confirmed the music was coming from that unit, and knocked on the door. When the tenant answered ES advised the tenant that she was disturbed by the music and asked the tenant to turn it down. ES testified that the tenant did not respond and failed to turn down the music. ES testified that music

persisted just as loud or louder from 1:00 to 3:00 AM. The next day ES completed an incident report on February 28, 2016 in which she stated:

> "You were playing your music so loudly that I could hear it clearly in #6. I asked you to turn it down. You wouldn't. You kept other tenants awake until 6:00 AM."

ES testified that she received two other complaints and filed incident reports dated March 15, 2016.

One from unit #5 at 3:00 AM February 27/28 2016 stated:

> "Music so loud I could hear it in my suite, so I walked out on the deck and down to her suite. I could hear it coming through the door at # 8."

Another report from Unit #2 at 1:00 Am February 7/28, 2016 stated:

> "I woke up to go to washroom and heard her stereo going at 1:30 AM."

ES testified about another incident on December 3, 2015, whereupon she observed that the tenant played her music loudly at 6:30 PM. ES asked the tenant to turn it down. She did, but it got louder at 9:53 PM and ES knocked on the tenant's door and asked the tenant to turn it down again. ES testified that the tenant did not turn it down and it persisted all night.

ES testified that on August 25, 2015 the tenant was playing music loudly at 12:50 AM. ES asked the tenant to turn it down. The tenant complied but the music got louder again and ES knocked on the tenant's door at 1:10 AM asking her to turn it down. The tenant refused.

JM, manager for the landlord, testified that the tenant's conduct began in 2008 with many noise complaints culminating with a previous Notice to End the Tenancy and in a hearing on September 28, 2011. JM submitted some of the previous incident reports which he argued were similar to the most recent ones in support of the Notice to End the Tenancy before me. In a decision dated September 28, 2011 the arbitrator cancelled the previous Notice to End the Tenancy for Cause and a settlement was entered into. The tenant agreed to refrain from causing noise disturbances in the complex. The arbitrator warned the tenant that if:

> "such behaviors were to occur again in the future and another notice to end tenancy issues, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer (arbitrator), for consideration."

JM admitted that the building was constructed in the 1960's, had single pane windows and poor insulation. He admitted that noise would transfer easily because of these facts. JM submitted that I am bound to consider the record predating the 2011 decision and all

current complaints which amount to sufficient cause to evict the tenant. JM asked for an Order for Possession effective May 31, 2016.

MP the tenant testified that on February 27, 2016 10:06 PM, ES complained that she could hear loud music coming from her unit. MP turned off her ordinary tabletop radio and went to bed at 10:38 PM. The next morning ES knocked at her door telling her that other neighbours heard noise from her unit until 6:00 AM.

MP testified that due to the layout of the building she doubted neighbours could hear music unless they were in the back yard our outside the building. MP also testified that people could mistakenly believe that noises coming from a building at the back of the complex were originating from her unit.

On December 3, 2015 MP testified that she and guests were listening to classical and jazz music from a laptop with internal speakers. After a complaint from ES at 6:30 PM, MP testified that she turned the music down.

On August 24, 2015 MP was watching a documentary on her fourteen inch TV without external amplification from 8:00 to 9:00 PM. At 9:00 PM, ES knocked on her door asked to turn the music down. MP was listening to some music after from 9:00 to 11:00 PM when she turned it off and she and her guest retired for the evening.

She testified that she sleeps between and 11:00 PM and 6:00 AM ever day. MP insisted that she only plays her radio, TV and laptop at normal levels and not late at night. The tenant wished to remain in the unit. The tenant requested that I cancel the Notice to End the Tenancy.

Analysis

The relevant Notice to End a Residential Tenancy relies on section 47(1) (d) (i) of the Residential Tenancy Act. That section provides as follows:

> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property

There was no evidence adduced or submissions made by the landlord of “interfering with the landlord”. Rather the landlord submitted that the Notice to End the Tenancy relied solely on whether the tenant or persons permitted in her unit “unreasonably

disturbed another occupant or the landlord of the residential property" pursuant to section 47 (1) (i) of the Act.

I have considered all of the incidents predating the decision of 2011 however because of the lengthy passage of time I find that all of the evidence of those incidents from 2011 and before were too old to be relevant to the issuance of the Notice to End the Tenancy dated February 29, 2016.

The landlord relied upon complaints dated March15, 2016 regarding the incident of February 27, 2016. Those complainants did not attend the hearing and could not be cross examined. There is a fundamental principle of natural justice, that the tenant has a right to confront her accusers. In this case those witnesses have not come forward to testify today. I find that the letters of complaint produced by the landlord of the complaints in March of 2016 regarding the incident of February 27, 2016, or any other alleged infractions of the tenant, not witnessed by the landlord or the landlord's agents who were the only ones present at the hearing, shall not be given any weight.

I have considered all of ES's complaints and testimony as to the noise and that she was disturbed. I accept her evidence. However, I am not convinced that all of the noise complained of came exclusively from the tenant's unit or that the disturbance was unreasonable.

I accept the tenant's evidence as it was given in a simple, unambiguous and straightforward manner.

I am also mindful of the landlord JM's evidence that this is an old building, with little insulation, single pane windows and, therefore, that noise easily transfers from one unit to another.

I find that all of the alleged "noise" complaints could be reasonably expected to originate from a unit occupied by a person who is engaged in daily life. It would be unreasonable to hold the tenant to a higher standard because of the age and imperfections of the building. I find that ES was likely disturbed. However, I find that those disturbances were not unreasonable. Nor am I convinced that all of the offending noises originated exclusively from the tenant's unit.

The burden of proof on an application for an order for possession for cause rests with the landlord who must on the balance of probabilities establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy. I find that the sum total of the landlord's evidence does not on the balance of probabilities satisfy the requirements of section 47 (1) (d) (i) of the Act and in particular that: the tenant *significantly interfered with or* ***unreasonably disturbe****d another occupant or the landlord of the residential property.* (my emphasis added) I therefore find that the landlord has failed to prove cause on the balance of probabilities. I allow the tenant's application.

Conclusion

I have cancelled the Notice of End a Residential Tenancy February 29, 2016 setting the end of tenancy for April 30, 2016. The tenancy is confirmed.

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: April 18, 2016

Residential Tenancy Branch