



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On May 24, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause (“the Notice”) dated May 19, 2016, be cancelled, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Has the Tenant or a person permitted on the property significantly interfered with or unreasonably disturbed another occupant or the Landlord?

Background and Evidence

The parties testified that the tenancy began on May 1, 2014 as a one year fixed term that continued thereafter as a month to month tenancy. Rent in the amount of \$850.00 is payable on the first of each month. The Tenant paid the Landlord a security deposit in the amount of \$425.00.

The Landlord testified that she has received complaints from other occupants within the rental building that the Tenant makes too much noise and is disturbing them. The Landlord testified that there have been noise concerns with the Tenant for quite some time and on February 8, 2016; the management of the rental building was changed to

deal with the ongoing issues. The Landlord testified that an occupant who lived there for 13 years recently moved out due to the ongoing noise issues with the Tenant. The Landlord testified that on April 12, 2016, the Landlord had a conversation with the Tenant to stop her noise. The Landlord testified that the Tenant works as a bartender and comes home late at night.

The Landlord testified that on May 9, 2016, the Tenant was given a warning letter regarding the noise. The Landlord testified that she received further noise complaints about the Tenant and that's when she issued the Notice on May 19, 2016. The Notice states the Tenant must move out of the rental unit on June 30, 2016.

The Landlord provided documentary evidence of letters written by other occupants of the building complaining about the noise coming from the Tenant.

An occupant of the building in unit 212 wrote four letters complaining of the noise coming from the Tenant. The complaint letters are dated between June 26, 2014, and May 8, 2016, and document the dates and times of disturbances. The occupant from unit 212 also testified as a witness for the Landlord at the hearing. The occupant testified that ever since the Tenant moved into the building there has been nothing but noise and disruption from her. He stated that he has constantly been awoken by the Tenant and her friends coming home after midnight making noise until 2:00 a.m. or 2:30 a.m. The occupant stated that the Tenant shows no consideration to others that live there and as a result he moved out of the building at the end of May 2016.

An occupant of the complex in unit 312 wrote a letter to the Landlord dated June 4, 2016. The occupant states that she confirms that in 2015, the Tenant was disrupting her sleep with her activities in the early morning hours (1:30 a.m.).

Another occupant from unit 310 testified as a witness for the Landlord at the hearing. The occupant testified that on May 19, 2016, the Tenant came to his apartment and apologized for making noise. He testified that on many occasions on the days following her apology, he was disturbed by the Tenant making noise described as loud sex. The occupant stated that the noise was so loud that he often has to sleep on his couch in his living room and even then he could still hear the noise. The occupant testified that on two occasions where he had his son over sleeping on the couch, his son was awoken from sleep by the loud noise.

In response, the Tenant acknowledged that she keeps different hours and stated that she stays off her balcony after 10:00 p.m. She acknowledged that she received a

verbal warning from the Landlord's agent on April 12, 2016, and was apologetic. She testified that after receiving the verbal warning she took precautions to minimize noise by making sure her windows and doors were closed, and by keeping the volume of her voice down.

The Tenant acknowledges receiving a warning letter on May 9, 2016, and testified that she was shocked because she had been taking precautions. She testified that she was in her bedroom and it is not unreasonable for her to be engaging in intimate behaviour with her boyfriend.

The Tenant testified that she has an ongoing dispute with the resident in unit 212 since she moved in. She testified that the complaints about her making noise at 2:30 a.m. are false. She testified that she stays off the balcony after 10:00 p.m. She testified that she tries to close the doors gently. The Tenant testified that she feels she is being harassed by the new manager who is extremely direct with her.

The Tenant testified that the managers do not live on the property, and that previous management never issued a Notice to end tenancy to her. The Tenant states the Landlord is trying to push her out. The Tenant submits that some of the units are being converted to vacation rentals.

The Landlord responded by stating that she disagrees with the Tenants allegations of harassment. She testified that the previous management were not dealing with issues in the building. The Landlord testified that the occupant who moved out of unit 212 has applied for an arbitration hearing against the Landlord for compensation due to the noise from the Tenant.

The Landlord testified that the building was built in the 1970's and the Tenant makes no effort to be quiet. The Landlord testified there are no plans to convert the Tenant's suite into a vacation rental.

The Landlord requested an order of possession effective June 30, 2016 if she is successful in this hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Residential Tenancy Policy Guideline # 6 states that every Tenant has the right to enjoy the possession and use of the rental premises in peace and without disturbance. A Landlord must take reasonable steps to prevent a breach of a Tenants right to quiet enjoyment.

The testimony of the Landlord and Tenant conflicts on the reason why the 1 Month Notice to End Tenancy was issued. The Tenant states she was taking precautions to be quiet. She feels harassed by the Landlord and feels that the Landlord issued the Notice to push her out. The Landlord states there is a history with the Tenant disturbing other occupants, and that despite issuing the Tenant a verbal warning and a written warning letter, the Landlord continues to receive noise complaints from other occupants.

I do not accept the Tenants submission that the Landlord is harassing her and evicting her with an ulterior motive. The Tenant has provided insufficient evidence that the Landlord has harassed her. The Landlord testified there are no plans to convert the Tenant's rental suite into a vacation rental unit.

I prefer the evidence from the Landlord that the Tenant has unreasonably disturbed other occupants of the rental property. I find that the documentary evidence and testimony of the Landlord and witnesses establishes a history of complaints against the Tenant. The evidence establishes that the Tenant was warned by the Landlord prior to the Landlord issuing her the Notice. The evidence establishes that following the issuance of the Notice on May 19, 2016, the Landlord received another noise complaint about the Tenant.

I find that the the Tenant unreasonably disturbed other occupants of the building. The tenancy is ending.

I dismiss the Tenant's Application to cancel the Notice dated May 19, 2016. As the Tenant was not successful in the hearing, I do not grant the recovery of the cost for the hearing.

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements under section 52 of the Act.

I find that the Landlord is entitled to an order of possession effective June 30, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I grant the Landlord an order of possession effective June 30, 2016. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: June 24, 2016

Residential Tenancy Branch