



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Arno Hotel
and [tenant name suppressed to protect privacy]

Dispute Codes:

CNC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause.

The Tenant stated that on June 21, 2016 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents.

On June 21, 2016 the Landlord submitted 7 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on June 24, 2016. The Tenant acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On July 06, 2016 the Tenant submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on July 06, 2016. The Agent for the Landlord acknowledged receipt of this evidence. He stated he did not need additional time to consider the evidence and it was accepted as evidence for these proceedings.

On July 08 2016 the Tenant submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on July 08, 2016. The Agent for the Landlord acknowledged receipt of this evidence. He stated he did not need additional time to consider the evidence and it was accepted as evidence for these proceedings.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Although all of the documents accepted as evidence and all of the testimony has been considered, only evidence that is relevant to my decision is referred to in this decision.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on May 20, 2016;
- rent of \$450.00 is due by the first day of each month;
- on June 20, 2016 a One Month Notice to End Tenancy for Cause was personally served to the Tenant;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by July 31, 2016;
- the Notice to End Tenancy declared that the tenancy was ending because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and the Tenant has engaged in illegal activity that has, or is likely to, jeopardise a lawful right or interest of another occupant or the Landlord.

The Agent for the Landlord stated that this Notice to End Tenancy was served, in part, because of three incidents that occurred on June 08, 2016, June 12, 2016, and June 20, 2016.

The Agent for the Landlord stated that:

- the Tenant has reported concerns about noise coming from unit #28;
- on June 08, 2016 he received a written report about those concerns from the Tenant;
- he spoke with the occupant of unit #28, who assured him he would reduce the noise levels by crushing cans in a different location and by moving the location of his television;
- at approximately 3:15 a.m. on June 08, 2016 the Tenant was banging on the door of unit #28, which is above the Tenant's rental unit;
- he has been told the Tenant was verbally aggressive when he spoke with the occupant of unit #28 on June 08, 2016, although he does not know what the Tenant said;
- at 3:19 a.m. on June 12, 2016 the Tenant knocked on the door of unit #28;
- he has been told the occupant of unit #28 did not answer the door;
- he has been told that the Tenant spoke to the occupant through the closed door on June 12, 2016;
- on June 20, 2016 the Tenant was banging on the door of unit #28 with a stick;

and

- he has been told that the Tenant yelled “next time it will be your face”.

The Tenant stated that:

- he has been repeatedly disturbed by the occupant of unit #28, who paces at night and crushes cans;
- he has attempted to resolve his noise concerns by reporting the noise to the Agent for the Landlord and to the police;
- he reported his concerns to the Landlord, in writing, on June 08, 2016;
- the noise levels were not reduced between June 08, 2016 and June 20, 2016;
- there has been less noise in unit #28 since June 20, 2016;
- on June 08, 2016 he knocked on the door of unit #28;
- he knocked in a “normal” manner; and
- he spoke with the occupant of unit #28 in a reasonable manner in an attempt to reduce the amount of noise the occupant was making;
- in the early morning hours of June 12, 2016 he was again disturbed by the occupant of unit #28, who was crying, stomping, and knocking things around;
- he knocked on the door of unit #28 and cannot recall if he occupant opened the door;
- he asked the occupant to be quiet in a voice that was not particularly loud;
- on June 20, 2016 he was again disturbed by the Tenant crushing empty cans’
- he was angry about the disturbance;
- he banged on the door of unit #28 with a golf club;
- he threatened to hit the occupant of unit #28 in the face with the club if he continued to disturb him;
- he did not intend to act on the threat; and
- he understands he overreacted on June 20, 2016.

The Landlord submitted 2 hand written documents which appear to be statements from people living in the residential complex. I note that some of the information on these documents is not legible. The Agent for the Landlord was permitted to read the documents aloud during the hearing, although he was also unable to read some of the writing. There does not appear to be any information in these statements that refers to the incident on June 08, 2016 or June 12, 2016, although there are several references to the incident of June 20, 2016.

Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy if a tenant or a guest of the tenant significantly interferes with or unreasonably disturbs another occupant or the landlord; the tenant or a person permitted on the property by the tenant seriously jeopardizes the health or safety or lawful right of another occupant or the landlord; the tenant engages in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and the tenant engages

in illegal activity that has, or is likely to, jeopardise a lawful right or interest of another occupant or the landlord.

On the basis of the undisputed evidence I find that the Tenant has been frequently bothered by noise emanating from unit #28 and the he was being disturbed by noise from that unit on June 08, 2016. I find that the Landlord has submitted insufficient evidence to show that the Tenant acted inappropriately on June 08, 2016 when he went to unit #28 to let the occupant know he was being disturbed by noise. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Agent for the Landlord's testimony that the Tenant was being verbally aggressive during this interaction or that refutes the Tenant's testimony that he spoke in a reasonable manner. I therefore cannot conclude that this tenancy should end as a result of the incident on June 08, 2016.

I find that the Landlord has submitted insufficient evidence to show that the Tenant acted inappropriately on June 12, 2016 when he went to unit #28 and spoke with the occupant to let the occupant know he was being disturbed noise. In reaching this conclusion I was heavily influenced by the Agent for the Landlord's inability to explain what the Tenant was saying during this interaction or that refutes the Tenant's testimony that he did not speak loudly and he was just trying to stop the occupant from disturbing him. I therefore cannot conclude that this tenancy should end as a result of the incident on June 12, 2016.

In determining that the tenancy should not end as a result of the incidents on June 08, 2016 or June 12, 2016 I was influenced by the absence of legible evidence from anyone who was disturbed by the incidents on June 08, 2016 or June 12, 2016, including the occupant of unit #28.

On the basis of the undisputed evidence I find that on June 20, 2016 the Tenant banged on the door of unit #28 and threatened to hit him with a golf club. While I accept that the Tenant has been frequently disturbed by the occupant of unit #28, I find the Tenant's response to the disturbances on June 20, 2016 was wholly inappropriate.

Although the Landlord has not submitted a statement from the occupant of unit #28, I find it reasonable to conclude that he was disturbed by the incident on June 20, 2016. On the basis of the documentary evidence submitted by the Landlord, I am satisfied that other occupants of the residential complex were disturbed by the incident.

I find that banging on a door with a golf club and threatening to harm the occupant of that unit is sufficient grounds to end a tenancy pursuant to section 49 of the Act. I find that tenants and/or occupants of a residential complex should not be subjected to such violent behavior.

As I have determined that the Landlord has satisfied the legislative requirements to end this tenancy pursuant to section 47 of the *Act*, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy. As the application to set aside the Notice to End Tenancy has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective on July 31, 2016. This Order may be served on the Tenant, filed with 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: July 12, 2016

Residential Tenancy Branch