



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN SIMILKAMEEN BRAIN INJURY SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for Cause and an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and agents for the landlord (the landlord) attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. 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.

Preliminary Issues

The landlords attending the hearing and named on the tenant's application as the landlords are the landlord's agents. The landlord's agents requested that the landlord should be properly identified as the South Okanagan Similkameen Brain Injury Society and not by the landlord's agent's names as submitted by the Tenant. The Tenant has made no objection and I order that the application be amended to reflect the proper identification of the landlord. This has been amended on the style of cause.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2011. The tenant pays a subsidized rent of \$553.00 per month and this is due on the first of each month.

The landlords testified that they took over the property from the previous non-profit society on July 01, 2015. They received all the records for tenants from the previous society. These records show that the tenant had been previously warned about noise and disturbances in August 2013 and again in February and May 2015. Since the landlords have taken over the property they have received numerous complaints about this tenant making noise disturbances and letters were sent to the tenant concerning this in March and May 2016. Other disturbances have also occurred and the tenant was spoken to verbally about these by the landlord.

The landlord testified that in March, 2016 the tenant held a birthday party and the landlord received three complaints from neighbours of the tenant's about noise. The police were also called due to the noise levels. The tenant was asked to attend the landlord's office to discuss the disturbances and at that time she agreed to lessen the noise and be more respectful of her neighbours. The landlord testified that these units are all family units and the tenant's unit is located in the middle of the complex so the noise from the tenant's unit does travel throughout the complex.

The landlord testified that the weekend after meeting with the tenant the landlord received more noise complaints and the police attended the complex. The landlord feels that they have done all they can to support the tenant in being more respectful of her neighbours. The landlord agrees the tenant has good intentions but seems unable to comply with the landlord's expectations for the quiet enjoyment of all other tenants. One of her neighbours had to give notice and has now left her unit. The landlord feels the only course of action was to serve the tenant with a One Month Notice to End Tenancy for cause, which was served in person to the tenant on May 24, 2016. This Notice provided one reason to end the tenancy; that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord. The Notice has an effective date of June 30, 2016; however, as that date has now passed the landlord seeks an Order of Possession for July 31, 2016.

The tenant disputed the landlord's claims. The tenant testified that she does sit outside her unit while she is smoking and engages in conversations with other tenants but does not unreasonable disturb them or create unreasonable noise at night. The tenant

testified that when the police had been called after a complaint had been made the officer who showed up at the tenant's unit was confused and thought he had come to the wrong unit or a false report had been made because the tenant was not making any noise.

The tenant testified that on her birthday weekend she was only outside until 11.00 p.m. and was at a neighbour's place sitting outside while they all watched their children playing. That neighbour's stepfather pulled up on his scooter and had music playing on his blue tooth speaker. This was not noise created by the tenant. The tenant referred to a letter provided from a neighbour in which they state that the tenant does not make excessive noise.

The tenant testified that she always had a good relationship with the previous landlord and since this landlord has taken over the property the tenant feels as if she is being targeted and harassed by the landlord. The tenant testified that there was one occasion in the day that she was playing her music with the windows open while cleaning. The tenant agreed she did have her sub placed on the floor which created some vibration but the landlord SM came to the tenant's door and was aggressive. The tenant testified that she feels the landlords have exaggerated the level of noise from her unit and other tenants are willing to vouch for the tenant. The tenant testified that there are other tenants living in the complex that create drama and complaints against her.

The tenant testified that the landlord has not complied with the *Act* and respected the tenant's right to quiet enjoyment of her rental unit by constantly targeting and harassing the tenant. The tenant feels that the landlords have acted unprofessionally by disturbing the tenant with complaints instead of putting them in writing. The tenant testified that on one occasion she was walking around the complex with her daughters with one of the landlords approached the tenant and started to yell at her and harass her.

The landlord testified that they always address any issues in a professional manner and do not intimidate tenants but rather responds to the needs of all tenants. If the landlord receives a complaint about one tenant then the landlord has to respond to this and approach that tenant about any noise or disturbances.

The landlord testified that when the tenant was playing loud music in the day the landlord and the maintenance man were two units away from the tenant's unit and the walls were vibrating because the music was so loud.

The tenant responded to this and testified that the landlord and maintenance man were not two units away they were just across the way when the landlord came over banging

on the tenant's door. The tenant testified that she did not realize the sub would vibrate so much and has now taken it off the floor.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

While I accept that the tenant has had at least one noise incident in the day time, there is insufficient evidence to show that the tenant has made noise from her unit at night which has significantly disturbed other tenants. The landlord has not provided further corroborating evidence to support the reason given on the One Month Notice to End Tenancy, no breach letters or letters of complaint from other tenants have been provided in documentary evidence and there does not appear to be any police reports filed concerning noise incidents. I therefore find the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenant's application for an Order for the landlord to comply with the Act, regulations or tenancy agreement; I am not persuaded by the evidence before me that the landlords have harassed the tenant or interfered with the tenant's quiet enjoyment of her rental unit. The landlords are entitled to serve notices, breach letters and warning letters to a tenant in the course of their duties and there is no limit as to the amount of these a landlord may serve upon a tenant. A landlord is also at liberty to speak to a tenant about any complaints. I refer the parties to a similar case that was dealt with in the Supreme Court case of *Whiffin v. Glass & Glass (July 26, 1996) Vancouver Registry No. F882525 (BCSC)*, in which case it was held that attempts by a landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the

landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy once given.

The tenant has insufficient evidence of any other form of harassment or intimidation by the landlords and therefore the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement is dismissed.

At this point I will caution the tenant to ensure that she is respectful of her neighbors and refrains from causing any disturbances in and around the unit with loud music or disturbances of another nature. The tenant is hereby put on Notice that any disturbances from her unit may result in her tenancy becoming seriously jeopardized and may result in a further Notice to End Tenancy.

Conclusion

The tenant's application to cancel the Notice is allowed. The One Month Notice to End Tenancy for Cause dated May 24, 2016 is cancelled and the tenancy will continue.

The remainder of the tenant's application is dismissed without leave to reapply.

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 06, 2016

Residential Tenancy Branch