Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, FF

Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on July 21, 2016 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on July 21, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced in May 2013. Rent is due on the first day of each month. A copy of the strata property “house rules” were submitted as evidence. The rules indicate that parties are not allowed after 11:00 pm and that unreasonable noise would not be tolerated.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on August 31, 2016.

The reason stated on the Notice to end tenancy was that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord (agent) stated that there was a series of noise issues dating back to 2013. Those ceased and again in 2016 problems have emerged with disturbances caused to other occupants of the strata complex. The rental unit is in a multi-unit strata complex

that is managed by a strata management company. That company does not act as agent for the landlord and it was agreed they have no authority over the tenant.

The landlord provided copies of anonymous letters of complaint issued on October 8, 2013; an undated letter from unit #303; August 22 and August 23 2016; September 7, 2016 and September 11, 2016. The landlord said these individuals did not want their names disclosed for fear of retaliation. I explained that the dated complaints from 2013 were not relevant to the Notice before me. I further explained, at several points during the hearing, that anonymous complaints carry very little weight as the tenant is denied the right to cross-examine those complainants.

Three written complaints, issued on July 2 (two letters) and July 16, 2016 were written by the same complainant. By the time of the hearing that person had agreed to be identified and her name was shared. The complainant, L.A. agreed to provide testimony and an attempt was made to reach her during the hearing. L.A. did not answer the call and a voice mail was left indicating that the arbitrator had attempted to have her enter the hearing. The landlord confirmed that she could not reach the witness via text messages that were sent during the hearing. As a result the letters written by this complainant could not be reviewed with her and she could not be cross-examined on her written submissions. I note that these complaints referenced both unit 402 and 403.

The landlord provided a copy of an October 29, 2013 letter from the property management company, indicating possible fines could be imposed as a result of noise complaints made by other occupants. A November 19, 2013 email from the property management company to the landlord indicated there had been continued complaints. On October 30, 2013 another email from the property management company was issued regarding complaints about the tenant causing disturbances.

On July 6, 2016 witness M.J.P., property manager for the strata management company sent the landlord an email indicating that two written complaints (from L.A.) had been submitted. They both said that there had been partying, loud music and foul language all night until 10:00 a.m. They reported that the noise had been increasing steadily over the past two months. The manager suggested the tenant be given a written warning as final notice. The next step if complaints continued would be fines to the landlord.

On July 7, 2016 the landlord met with the tenant to discuss the reported problems. The tenant provided an email sent to the landlord on that date thanking her for coming to visit. The emailed pointed out that the landlord could see that the unit was not damaged or used for partying regularly. The tenant said that the incident (urination from the balcony) was isolated and would not happen again. The person who did this was told he was no longer welcomed as a guest. The asked the landlord to contact her if she had questions.

On July 19, 2016 M.J.P. emailed the landlord with another complaint in relation to parties held over the weekend, lasting until 4:31 a.m. The landlords' suite was involved. Other occupants complained that this was making life unbearable. The landlord said she did

not investigate this report or review the complaint with the tenant and on July 21, 2016 the Notice to end tenancy was issued.

The on-site property manager, J.R. provided affirmed testimony. J.R. began working at the building nine months ago. He has had only one encounter with that tenant and that was approximately two months ago when they discussed noise complaints. He wanted to work out an understanding with the tenant; even though he has no authority over the tenancy. J.R. described the meeting as friendly. He had calls about noise in the night, loud music and drinking in the parking lot. The only evidence J.R. had of these incidents was from the written complaints submitted to the property management company. J.R. said that afterward the tenant's brother was threatening with him. After he spoke with the tenant the problems increased but over the past month there have not been any issues. In response to questions from the landlord the witness said that other occupants are intimidated by male guests as they are large and loud and there is open drunkenness.

J.R. confirmed that the occupant in unit 402, adjoining the tenants' unit, was evicted effective August 31, 2016. That tenant had been issued a Notice ending tenancy for cause and did not dispute the Notice. J.R. said that the complaints had originated as a result of disturbances from both units 402 and 403.

The tenant was given the opportunity to question the witness. She asked J.R. if he had yelled at her or said he would do anything to have her evicted; he denied those allegations. J.R. said he was not attempting to have the tenant evicted or get even. The noise complaints make his job difficult and he wanted quiet in the building, he just wanted a respectful environment.

The tenant asked J.R. if the quiet that has occurred over the past month was consistent with the eviction of the occupant in unit 402 and J.R. responded that it was.

Witness M.J.P. provided affirmed testimony confirming receipt of the complaints issued by other occupants of the rental building. The witness confirmed that complaints were being issued in relation to both units 402 and 403. M.J.P. said that on August 22, 2016 a complaint was made that garbage and beer bottles rained down on him from the tenants' unit.

In response my question M.J.P. replied that the letters received in July 2016 related to both units 402 and 403. One letter provided a list of dates and disturbances in the different units and a different occupant supplied a letter on July 2, 2016 outlining the same issues of noise. The complainant said he was sure the problem originated in unit 403 not 402, as 403 is directly above home.

M.J.P. responded to the tenant that she did recall the tenant calling her to apologize for the behaviour of a guest who had urinated from her balcony. This occurred on July 5, 2016. M.J.P. responded that she would have told the tenant that this was a very bad thing, even to occur once, but it was OK if it there were no further problems going

forward. M.J.P. said that as far as she was aware, the urination event was just the beginning of the issues that then developed.

The landlord pointed out that the tenant did not deny someone had urinated from her balcony and that it is unlikely she would not have seen this occur. After July 5, 2016 a guest of the tenant vomited off the balcony in the early hours of the morning.

The landlord supplied a copy of an August 23, 2016 email from J.R. who points out that he had received complaints about unit 403. The landlord has witnessed people drinking in the parking lot, using vulgar language, heard loud music and people smoking pot.

The landlord said if these disturbances continue they will be fined by the strata.

The tenant said that complaints from 2013 related to a past relationship with an individual who did cause problems. The parties were told that my decision would not be taking into account any issues that had occurred three years previous.

The tenant said that her unit has been confused with unit 402; that she had a boyfriend several months ago who would go to unit 402 in the evenings and party with that occupant. The tenant said this occurred over a one month period of time and that she no longer has this person visit in her home. When the tenant found out someone had urinated from her balcony she took full responsibility and apologized for the incident.

The allegations made regarding disturbances on July 16, 2016 did not involve the tenant. She was not home that night. The tenant said that other occupants have mistaken the sounds coming from unit 402 as coming from her unit. The tenant wrote the on-site manager to tell him that she was being blamed for disturbances caused by 402.

The tenant reviewed some of the anonymous complaints and said they were unfair. The tenant feels that she is being slandered and harassed. The tenant gave an example of an incident where she and friends drove into the parking lot and parked in the visitors stall so the tenant could run to her unit and pick up something. When the tenant drove out of the parking lot the police pulled her over as the result of an allegation from an occupant of the building who alleged she was drunk; this was not true.

The tenant said that in fact she eventually issued a complaint about the occupant in unit 402. She had been friends with this person but she said he was the person allowing the disturbances to occur.

The tenant said that after July 5, 2016 she had friends over to watch a movie. Her friend began to feel unwell and went out to the balcony, at which point she became ill. That person then came back into the unit and continued to be ill. The next day the guest returned to clean up the mess below the unit but it had already been cleaned.

The tenant said she was given a single verbal warning and then the eviction Notice was issued. J.R. met with the tenant in relation to the person who urinated from the balcony,

but no other issues were raised. The tenant believes the J.R. wants to see her evicted without cause.

The tenant had her witness, C.P. provide affirmed testimony. C.P. is the occupant who was evicted from unit 402. C.P. said that during the last few months of his tenancy he was retaliating against people who been making complaints against him. C.P. said he had loud parties and that the tenant was not involved. C.P. said he purposely caused disturbances up until the end of August when he vacated as a result of the eviction Notice. C.P. said he had been friends with the tenant until recently. C.P. said that his actions "fell back" on the tenant. C.P. stated he only found out just prior to the hearing that the tenant had made a complaint about him, but he did not think that was unjustified. C.P. admitted to throwing beer bottles from the balcony.

Analysis

When a tenant applies to dispute an eviction Notice the landlord has the burden of proving the reason given on the Notice.

As explained during the hearing, I have not given the reports of disturbances from 2013 any weight. I find that those allegations are dated and occurred so long ago as to be irrelevant.

Ending a tenancy must be based on fact and those who make allegations must provide the tenant with an opportunity to cross-examine the accusers. The strata property witnesses provided testimony that they received the complaints but they did not have responsibility for investigating the substance of the allegations; that falls to the landlord.

There was no single substantiated event confirmed by a witness other the urination from the balcony on July 5, 2016 and the incident where the tenants' guest vomited. The tenant acknowledged both of these. There was no evidence before me as to who, if anyone was disturbed or interfered with as a result of these two events. I agree with the assessment of M.J.P who testified that the urination incident was "very bad" but not an issue going forward. I have then considered the undisputed occurrence of vomiting from the balcony. I found the tenants' submission believable and consistent. There was no witness at the hearing to testify as to the impact this had; how they were affected or how they became aware of such an incident. Therefore, I have accepted the vomiting incident occurred as set out by the tenant; an accidental event due to illness.

J.R. made what I find were vague allegations in an August 23, 2016 email, after the Notice was issued, where he said he had witnessed disturbances; yet no dates or details of these could be provided during direct testimony of J.R. to specifically demonstrate how the tenant was involved. Further, the tenant could expect to defend allegations only upon which the Notice to end tenancy were based, up until July 21, 2016.

I found C.P.'s testimony surprisingly frank. C.P. confirmed that there were serious disturbances that originated in his unit and his belief that the tenant was being blamed for

problems that he was causing. This does not mean that there were also not disturbances issuing from the tenants' unit; but I can find no proof of that. Further, I find it more than coincidental that since C.P. has vacated the disturbances have ceased. This leads me to believe that the disturbances were caused by C.P. and those who he allowed into his unit. I also found the tenants' complaint to the strata management regarding C.P. supported her submission that the parties were not occurring in her unit in the time leading up to July 21, 2016.

There was no evidence before me that the landlord was facing any threat of fines as a result of allegations made by others during this year.

Therefore, after considering all of the evidence submitted at this hearing, I find that the landlord has provided insufficient evidence in support of the reasons given on the Notice ending tenancy issued on July 21, 2016. The Notice is cancelled and the tenancy will continue until it is ended in accordance with the Act.

At the conclusion of the hearing I suggested that the strata management company does not represent the interests of the landlord as they are not agent for the landlord. If the landlord is notified of disturbances by the strata management company it is for the landlord to investigate those reports and to communicate with their tenant.

As the application has merit I find that the tenant is entitled to deduct the $100.00 filing fee from the next months' rent due.

Conclusion

The one month Notice to end tenancy for cause issued on July 21, 2016 is cancelled.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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: September 22, 2016

Residential Tenancy Branch