Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, FF

Introduction
This hearing dealt with two related applications. One was the landlords' application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. The other was the tenant's application for an order setting aside the notice. Although the tenant's application for dispute resolution did not say that she was also seeking a monetary order the attachments to it did set out a claim for damages for loss of quiet enjoyment.

Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

Issue(s) to be Decided

- Do the landlords have grounds within the meaning of the *Residential Tenancy Act* for ending this tenancy?
- Is the tenant entitled to a monetary order and, fi so, in what amount?

Background and Evidence
This month-to-month tenancy commenced February 1, 2015. The monthly rent, which is due on the first day of the month, includes hydro, water and heat.

It is helpful to have a clear picture of the physical layout of this property. The lot is about ¼ acre and slopes down from the street to the water's edge. At the top of the lot is a free standing, two-story garage and suite. The suite is on the top level of the building. The front door of the rental unit and parking for the unit are at street level; facing the street.

The driveway runs along the side of the garage and opens out in front of the garage to form a court yard area. The garage doors are on the lower level. The garage doors face the house and the water, which are further down the slope. In addition to using the

garage as a place to park their vehicles the landlords keep their tools in the garage and use it as a shop.

Between the garage and the house is a heavily landscaped garden area that includes a patio and a pergola. The parties testified that there is about fifty to seventy-five feet between the garage and the main house.

The bedroom of the rental unit is at the back corner of the building- the one that faces the driveway and the house- directly above the garage doors.

The female landlord is retired and has a variety of health issues, including a heart problem. She is an avid gardener and her passion and hard work are clearly evident in the photographs submitted by the landlords. Her evidence is that gardening is very important to her physical and mental health.

The male landlord works Monday to Friday, so is only able to work in the yard on the weekends and holidays. The landlords testified that in the summer months, especially on the weekends when the male landlord is home from work, their life revolves around working in the garden, entertaining on the patio, visiting the neighbours in the driveway and working in the garage.

The tenant is a 47 year old social worker who lives in the unit with her dog. She said she rented this unit because it was quiet, peaceful and private. She also works regular office hours, Monday to Friday, and comes home at noon on those days to let her dog out. She testified that she has been with her partner since January 2016. Her partner does not live with her but usually visits on weekends.

There were no issues with the tenancy until Mother's Day this year. The landlords and their adult children were working on a woodworking project in the driveway, just below the suite, when the heard the unmistakable sounds of sexual intercourse. Eventually, they gave up on their project because they were feeling so uncomfortable and went into the house.

The following weekend there were three similar occurrences. The first time the female landlord and her sister were having coffee on the patio between the house and the garage. The second time the landlords were working in the garage on a project that required the use of a power saw. The third time the female landlord was talking to her neighbour at the top of the driveway. On each occasion the landlords stopped their activities and went into the house.

The landlords sought advice from the Residential Tenancy Branch. They were told to speak to the tenant; give her a written warning letter; and document any further issues.

The female landlord arranged to speak to the tenant on May 20. It was a very uncomfortable conversation for both of them. Basically the landlord told the tenant that they had heard her being intimate with her partner, they did not want to have to listen to this activity, and any repeat might lead to the end of the tenancy. The tenant said she was shocked by the conversation and felt she was being reproved for being a deviant.

The landlord also gave the tenant a warning letter. It said, in part:

> "We can only assume that you are unaware that the sounds you are making are audible through the open window and on the north side on the outside of the building and we require you to take more steps to be more private."

The tenant bought and installed a security camera in the unit. Although the unit does not have air conditioning she said that when she is home she keeps the windows and blinds closed, especially when her partner is there. In her evidence she stated that she and her partner have taken measures to minimize noise such as shutting the windows, playing music, and putting padding behind the headboard.

The landlords' evidence is that form mid-June to mid-July they avoided working in the driveway, garage, court yard and front garden areas as much as possible on the weekends. In mid-July they decided that they were entitled to the use of their own yard and resumed their usual routines. The result was that they heard the same noises every weekend for the next three weekends.

On August 3 they issued and posted the 1 Month Notice to End Tenancy for Cause. The effective date of the notice was September 30. They testified that they deliberately served the notice at the beginning of August so the tenant would have two months to find another place.

The landlords gave evidence about several other occasions of noisy day time sex in August and September. The landlords' testimony is that on each occasion it would have been obvious that they were working in the yard or the garage; that on several occasions the windows of the suite were open; and that they would feel extremely uncomfortable and go into the house.

The tenant filed her application for dispute resolution on August 11; the landlords filed theirs on September 8.

The tenant testified that she was mortified and extremely upset when she received the landlords' evidence package, which consisted of a log of events since Mother's Day. She expressed the opinion that essentially the landlords had spent the summer lurking around the garage hoping to catch her and her partner "at it" and this behaviour not only represented a violation of her privacy but posed a threat to her personal safety. She suggested that based upon her experience as a mental health worker she knew that this type of behaviour could escalate.

The tenant asked for permission to put a chain lock on the door so she could have a good night's sleep. The tenant did acknowledge that no improper access by the landlords to the rental unit was been recorded since she installed the security cameras.

She also stated that she did not realize how upset the landlords were until she received their evidence package.

The tenant testified that the area is quite boisterous on summer weekends – there is a park nearby and the neighbours are always working on renovations. She also testified that she never paid any attention to what the landlords were doing in the yard.

The landlords testified that they lived in the suite for 2 ½ years before the house was completed. They knew from that experience that you can hear the activities in the yard from the suite. They argued that even though the tenant knew when they were working in the yard or the garage she did not take any measures to limit the sounds coming from the suite, or their resulting discomfort.

The landlords filed letters from the female landlord's doctors describing the negative effect the stress of the past few months had had on her.

The landlords and the tenant have basically had no contact since May 20 and both the female landlord and the tenant testified about the efforts they have made to avoid the other.

Analysis

First of all, whenever landlords or tenants contact the Residential Tenancy Branch about an ongoing situation such as:

- the tenant is having too many parties or too many visitors that stay for very short periods of time;
- the heat is not working;
- the neighbour is noisy and the landlord is not doing anything about it;
- the landlord is entering the unit illegally or otherwise harassing the tenant;

- the rental unit is listed for sale and there are have been too many showings;

the party is advised to keep a log of events. That is because a specific time line of events is much more useful information for an arbitrator than the more general and unspecific complaints that use words like “always”, “frequently”, “often” or “occasionally”. Knowing this I am not prepared to draw any unsavoury conclusions from the fact that the landlords filed a detailed log of events.

Both landlords and tenants are entitled to use and enjoy their respective spaces in a normal manner and both parties must be considerate of the other. If either fails in this duty the legislation provides remedies for the other.

In this situation the tenant is entitled to have and enjoy personal relationships. However, the landlords are also entitled to the normal use of their garage, garden and yard, which in the warmer months includes spending the daytime hours in those areas without discomfort caused by another’s activities.

The landlords took the proper first steps by bringing the issue to the tenant’s attention and giving her a formal written warning. The tone of the letter was appropriate and gave the tenant the benefit of the doubt by suggesting that she may be unaware that the sounds from the suite were carrying into the yard outside.

I accept the landlords’ evidence that they would have preferred not to be exposed to intimate noises. If they liked listening to them, as the tenant basically suggested, they would have let the tenancy continue; not take steps to end it. I also accept the landlords' evidence that the tenant’s behaviour did have a negative effect on how they used and enjoyed their home.

I am not convinced that the tenant did as much as she claimed she did to protect everyone’s privacy. First of all, nothing changed. The noise remained unabated. Secondly, in many of the photographs the bedroom windows are open. Thirdly, if the tenant was taking the landlords’ complaint seriously she could have checked with them as to whether her efforts at sound deadening were working. She did not. Finally, I am particularly troubled by the tenant’s statement that she did not realize how upset the landlords were until she received their evidence package. One would have thought that an uncomfortable conversation, a written warning, and a notice to end tenancy would have been a good indication of the landlords’ feelings.

I find that the tenant’s activities did significantly interfere with or unreasonable disturb the landlord and that the landlords do have a valid reason for ending this tenancy. The

1 Month Notice to End Tenancy for Cause dated August 3, 2016 is valid and the tenancy ended on the effective date of that notice. I grant the landlords an order of possession effective two days after service. However, if the order of possession is not received until after the November rent has been paid, the order will not be enforceable until November 30.

As the landlords were successful on their application they are entitled to reimbursement from the tenant of the $100.00 fee they paid to file it. Pursuant to section 72(2) that amount may be withheld from the security deposit and/or pet damage deposit.

The tenant's application for compensation is dismissed for the reasons set out in the first paragraph of this section.

Conclusion

For the reasons set out above an order of possession is granted to the landlords and the tenants' application is dismissed.

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: October 28, 2016

Residential Tenancy Branch