



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlords for the cost of the application.

The tenant and one of the named landlords attended the hearing. Each gave affirmed testimony and was given the opportunity to question each other.

The parties have also provided evidentiary material, some of which is marked as being received late. I have reviewed the material, and I find that it has been provided in accordance with the Rules of Procedure, and was not submitted late. No issues with respect to service or delivery of documents or evidence were raised by the parties, and all evidence has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, particularly with respect to the reason for issuing it?

Background and Evidence

The landlord testified that this tenancy began as a 1 year fixed term about 9 years ago which reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$700.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement has not been provided by either party. The rental unit is a basement suite and the upper level of the home is also tenanted.

The landlord further testified that on August 2, 2016 he served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. A copy has been provided and it is dated August 1, 2016 and contains an effective date of vacancy of September 1, 2016. The reason for issuing the notice states:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that on August 1, 2016 at 5:55 a.m. the landlord received a call from tenants in the upper unit informing that the tenant was playing a drum set or stereo music in a loud manner. The neighbouring tenant had asked the tenant to stop, but the tenant uttered threats in retaliation.

The landlord also testified that there were occurrences of the tenant forcing incense smells through air ducts of the rental home to mask the smell of smoking. The respective tenants have had several confrontations to the point of police involvement, and the tenant treated the noise of walking around in the upper unit as an offensive act by the neighbouring tenant and would retaliate with loud music.

The landlord issued the 1 Month Notice to End Tenancy for Cause based on the history. A previous tenant also wrote a letter to the landlord complaining of the tenant, and the landlord tried to talk to both of them. The landlord asked his opinion after moving out and he said the issue was mostly noise, but didn't mention loud music from the tenant in the lower level. The tenant in the lower level is a musician and has to practice so the tenant upstairs endured it. The tenant resides in the basement, and it's a fact of life that there will be noise, however the tenant won't accept noise from upstairs such as walking around or moving chairs.

The landlords also installed heavy duty carpet underlay to minimize noise, but is still not sufficient to satisfy the tenant. The current tenant in the upper level of the rental home is not as accommodating as the previous tenant, and police were called. The landlord received a copy of a police report and gave a copy to the tenant. A copy has not been provided for this hearing; it would not be useful because no decisions were made and only mentioned a dispute. When people call police, the landlord is asked to act, and has to do so. The tenant upstairs and his girlfriend feel threatened.

The tenant testified that at 5:00 a.m. on August 1, 2016 the tenant burned incense to mask the smell of pot. Then the tenant upstairs started walking loud so the tenant turned on the stereo. The upstairs tenant knocked on the tenant's door to settle it.

The tenant further testified that there were never substances smoked until the tenant and his girlfriend moved in upstairs, and the tenant told police that he hoped the girlfriend had a medical license because she smoked it every 2 hours. It was a dispute that the parties discussed. They had words, and knew where each other stood. Then the tenant from upstairs turned it into calling police saying his girlfriend was threatened. That was a cheap shot; she wasn't there. Police just told the parties to stay away from each other.

The tenant also testified that there is nothing in the police report that says the upper tenant's girlfriend felt threatened. The tenants upstairs want to turn it into a party house, laughing and talking loud, smoking pot and cigarettes and drinking beer. The tenant said, "Not on my watch."

The tenant further testified that it would be convenient to get rid of him to raise the rent for new tenants. The tenant has lived there 10 years and his rent is lower than the upper level. Also, the landlord has not effectively responded saying that the tenant has to prove smoking or he can do nothing. The tenant can't handle cigarette smoke, is allergic, and burning incense allows him to sleep and overlook the nauseating smell of vaping.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act* which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute.

The tenant's position is that the tenants in the upper level have been unreasonably loud, so he has retaliated. I accept that it was an incident that the police only attended to keep the peace and told the neighbours to stay away from each other. The evidence of the tenant that he and the neighbouring tenant had a discussion and knew where each other stood is believable. I also don't believe that the girlfriend of the tenant in the upper level was present when the discussion took place.

The landlord described an incident and testified that history also has its incidents. The landlords' position is that when police get involved, the landlord has an obligation to do something, and the policy is to issue a notice to end the tenancy. It is not for me to decide who the landlord ought to have issued it to, but whether or not the landlord has established that the tenant significantly interfered with or unreasonably disturbed another occupant, and the threshold is high.

I accept the landlord's testimony that the tenant has to realize that sounds such as walking or moving chairs is to be expected when residing in a basement suite. He also testified that there is a history of disturbances, and I have read the emails provided by the landlord. I agree that the tenant's retaliation of whatever he believes the tenants in the upper level are doing amounts to unreasonable disturbance which has been an escalating issue since 2015. Considering the emails and letters exchanged by the parties, I disagree with the tenant that the landlord has not effectively responded. The landlord has been dealing with this issue for many months and has even gone as far as trying to allow the tenant to inspect the upper unit when he alleges smoking.

In the circumstances, I find that the tenant has unreasonably disturbed the other occupants and the landlords had cause to issue the notice. The tenant's application to cancel it is dismissed.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice is in the approved form. I find that it is in the approved form, however the effective date of vacancy is changed to September 30, 2016. Since the effective date of vacancy has passed, and the tenant has not applied for an extension of time to vacate the rental unit, I grant the Order of Possession on 2 days notice.

Conclusion

For the reasons set out above, the tenant's is hereby dismissed, and I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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 21, 2016

Residential Tenancy Branch