



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy September 29, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on September 29, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business on October 7, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated September 29, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 1, 2002. The rent was initially \$700 per month payable in advance on the first of each month. The present rent is \$935 per month.

The landlord produced a copy of the Application to Rent. However, he stated he was not able to find a copy of the tenancy agreement. The tenant testified he does not have a copy of the tenancy agreement. The landlord produced copies of tenancy agreements with other tenants that were entered into around the same time.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 -
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The landlord seeks to end the tenancy on the basis of a large number of noise complaints, the aggressive nature of the tenant's conduct in dealing with some other tenants and the tenant is operating a business from the rental unit (music lessons).

The landlord provided extensive documentary evidence.

Briefly, Landlord's Witness #1 testified as follows:

- She moved into a rental unit at the end of the third floor hall in August 2016.
- She was surprised by the excessive noise caused by the number of people going to the tenant's unit.
- Many of the people going to the tenant's unit are carrying guitars. In her opinion the tenant is carrying on the business of a music school from his premises.
- She is significantly disturbed by the noise made by the large number of students going past her unit to attend the landlord's place. It occurs during the day and early evening hours.
- She sent an e-mail to the landlord complaining about the disturbances.

Briefly, Landlord's Witness #2 gave the following evidence.

- He referred to an 8 page statement which sets out his complaints in detail from September 15, 2015 to date.
- He testified he moved in the rental unit immediately underneath the tenant's on September 15, 2015.
- His first problem occurred in October 2015 when he could hear the metronome. He contacted the Tenant who apologized for the noise and advised he would move it (which he did). The tenant gave Witness #1 his cell phone number and asked him to call if he was disturbed in the future.
- Witness #1 gave extensive evidence as to disturbances. On some occasions the tenant was playing the guitar in the early hours of the morning.
- On other occasions the music was so loud that the he could not carry out a normal conversation in his rental unit.
- He testified the music lessons occurred on a daily basis. In some cases they started prior to noon and in other cases they lasted until 10:00 p.m.
- The tenant walked heavily which was very disturbing.
- The problems continued. At the end of July the tenant became more confrontational. He accused Witness #2 and #3 of complaining to the landlord and trying to ruin his business. He stepped into Witness #2 space and began posturing a few inches away from his face. He stated that he had lived there for 16 years and no one else had complained.
- The tenant continued to spread rumors that Witness #2 and #3 were trying to ruin his business.
- Eventually he lodged a formal complaint with the landlord in July 2016.
- The statement provided by this witness goes into great detail as to timing and the nature of the disturbances.

Briefly, landlord Witness #3 gave testimony confirming the evidence of Witness #2 (she lives in the same rental unit with him) and outlining how the Tenant has significantly interfered with and unreasonably disturbed her enjoyment of the rental unit.

Briefly, the landlord gave the following evidence:

- He referred to a document titled Sequence of Events which sets out his version of what happened from October 2015 to November 18, 2016.
- The tenant is operating a business of giving guitar lessons from his rental unit which is against the tenancy agreement and the rules and regulations.
- He has received many complaints from other residents in the rental unit. He has tried to work out the problems with the tenant but he, or persons he has permitted on the property continues to make unreasonable amount of noise.

- In one situation in late August he (the landlord) was showing a prospective tenant around the building. The tenant talked to the prospective tenant and tried to influence the prospective tenant not to rent the suite. When the landlord queried him the Tenant responded "You ruin my business, I ruin yours!"
- The tenant has been operating a business conducting music lessons. This is contrary to the tenancy agreement and the City of North Vancouver bylaws. The City of North Vancouver has the authority to fine him as he does not have a business license. It can also affect the landlord's insurance.

Briefly, the tenant testified as follows:

- He was introduced to the building by a friend with lived in an neighboring unit.
- The landlord's father was aware of his part time music school and agreed to allow it.
- No one has complained up to now.
- The tenant acknowledges he give music lesson and is paid for those lessons. He teaches most days. The number of students per day may vary from a couple of students to 4 to 5 students.
- The landlord wishes to evict him so that he can raise the rent. The landlord attempted to raise the rent from \$935 to \$1400 per month but the tenant refused to accept the proposal.
- The landlord has harassed him and attempted to bully him.
- The noise complained about is that of a classical guitar. It is not disturbing as alleged by the witnesses.
- He referred to statements from neighbors who stated they have not been disturbed by the tenant.
- He denies the version of events relating to the confrontation between he and Witness #2. He stated Witness #2 was aggressive and used abusive language.
- The landlord's actions amount to harassment and bullying. He has caused him a great deal of stress.

Tenant's Witness #1 testified as follows:

- He has been a friend of the tenant for 25 years and often visits the tenants.
- The building is old and noise carries.
- He took issue with the landlord taking photographs saying this amounts to a breach of privacy and harassment.

Analysis:

The landlord has the burden of proof to present sufficient evidence to establish cause based on a balance of probabilities. An arbitrator is being asked to determine whether the conduct of the tenant up to the date of the Notice to End Tenancy (in this case September 29, 2016) is grounds to end the tenancy.

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for the following reasons:

- I am satisfied the tenant is conducting the business of giving music lessons from the rental unit and that he has between 2 and 5 students attending on a daily basis.
- I accept the landlord's evidence this is contrary to the bylaws of the City of North Vancouver.
- It puts the landlord's property at significant risk as it is associated with security risks.
- I am satisfied the tenant has significantly interfered with and unreasonably disturbed other residents in the rental unit. The tenant or persons permitted in the rental property by the Tenant have caused excessive noise. These disturbances occur throughout the day and evening. In some cases they have been extremely loud. While the tenant will often reduce the volume when he received a complaint the number of times this has occurred has been excessive.
- I am satisfied the tenant has significantly interfered with and unreasonably disturbed the landlord by his efforts to try to persuade prospect tenants not to rent a unit in the rental property.
- I accept the evidence of landlord's witness #2 as to the cause of the confrontation between he and the tenant at the end of July 2016.
- I do not accept the submission of the tenant when he testified the landlord is harassing and bullying him. The landlord is merely reacting to the refusal of the tenant to stop disturbing others.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end. I advised the parties that given that we are at the end of November that if the landlord was to succeed I would order that the tenancy end at the end of December. I further order that the application of the tenant for the cost of the filing fee be dismissed.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the effective the Order for Possession for December 31, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: November 29, 2016

Residential Tenancy Branch