



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, MNSD, OPT, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order of Possession; and to recover the fee for filing this Application for Dispute Resolution.

As the Tenant is occupying the rental unit, there is no need to consider the application for an Order of Possession. As the rental unit has not yet been vacated, I find it is premature to apply for the return of the security deposit.

The Tenant stated that on November 06, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted with the Application were posted on the Landlord's door on November 06, 2016. As the Agent for the Landlord acknowledged that these documents were received by the Landlord, the evidence was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute is possession of the rental unit and I will, therefore, consider issues related to the Landlord's attempt to end the tenancy, which include:

- the application to set aside the Notice to End Tenancy;

- the application for compensation for loss of quiet enjoyment as it relates to being served with a Notice to End Tenancy; and
- the application for compensation for loss of quiet enjoyment as it relates to noise disturbances that are directly related to service of the Notice to End Tenancy.

The Tenant's application for compensation for loss of quiet enjoyment for any other reason is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the Act, be set aside and is the Tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on October 31, 2010;
- the current monthly rent is \$1,330.00;
- rent is due by the first day of each month;
- a One Month Notice to End Tenancy for Cause was personally served to the Tenant on October 11, 2016;
- the One Month Notice to End Tenancy that was served to the Tenant declared that the Tenant must vacate the rental unit by November 30, 2016;
- the One Month Notice to End Tenancy declared that the Landlord wished to end the tenancy because the Tenant had engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

At the hearing the Agent for the Landlord stated that the Landlord did not intend to end the tenancy on the basis of illegal activity. He stated that the Landlord wished to end the tenancy because the Tenant has been disturbing the Landlord and other occupants of the rental unit.

The Tenant was advised that the One Month Notice to End Tenancy would be dismissed on the basis that the Landlord did not correctly identify the reason for ending the tenancy, in which case the Landlord would have the right to serve her with another One Month Notice to End Tenancy in which the Landlord cited the correct reason for ending the tenancy.

The parties were advised that the One Month Notice to End Tenancy could be amended at the hearing, providing the Tenant consented to the amendment and providing she felt prepared to respond to the allegation that she has been disturbing the Landlord and other occupants of the rental unit. The Tenant stated that she was prepared to respond to the allegation and she consented to the aforementioned amendment.

The Agent for the Landlord stated that:

- there are a total of 8 suites in the residential complex;
- the Tenant has complained of excessive noise from each suite;
- the noise complaints involve people talking loudly and walking loudly;
- on one occasion the Tenant has complained about noisy “love making”;
- the Tenant has repeatedly complained to the Landlord about other occupants;
- the Tenant has complained directly to some of the other occupants;
- the Tenant has complained several times about the new occupants in unit #8;
- the Tenant asked the occupants of unit #8 to sign a document regarding the noise in their suite;
- the occupants of unit #8 told the Landlord they were concerned about being asked to sign a document;
- the Tenant spoke to the former occupant of unit #8 regarding the noisy “love making”;
- the former occupant of unit #8 expressed concern about this complaint to the Landlord;
- when the Landlord spoke with the new occupants of unit #8 they said they were only speaking in normal voices;
- the Landlord also lives in the residential complex and has not noticed the new occupants of unit #8 coming and going in the early morning hours;
- the Landlord lives close enough to unit #8 to have heard the comings and goings;
- the Landlord would have noticed comings and goings, as there are motion lights, which are functioning, that would have been detected by the Landlord;
- the Landlord is not hard of hearing;
- the Tenant spoke with his mother, who lives in the complex, and expressed concern about noise from “talking” and “walking”;
- no other occupants in the residential complex have complained about noise; and
- he thinks his brother and his mother have told the Tenant to stop communicating with the Landlord and/or other tenants regarding her noise concerns.

The Tenant stated that:

- she has been disturbed by the former occupant of unit #8 by conversation and noisy “love making”;
- she brought her noise concerns to the attention of the former occupant of unit #8 on one single occasion;
- the former occupant of unit #8 has not disturbed her since she brought her concern to the attention of this individual;

- she has complained to the Landlord about noise from the current occupants of unit #8 on several occasions;
- the Landlord has not responded to those complaints;
- on October 01, 2016 she spoke with an occupant of unit #8 and told him she was being disturbed by noise;
- she did not speak with the occupants of unit #8 again until after she received the One Month Notice to End Tenancy;
- after she received the One Month Notice to End Tenancy she spoke with the new occupant of unit #8, who apologized for disturbing her;
- the new occupant of unit #8 indicated that he would consider writing a statement in support of her application to cancel the One Month Notice to End Tenancy;
- on October 29, 2016 she wrote a statement regarding the disturbances and slipped it under the door of unit #8, in hopes that they would sign the statement;
- the new occupants of unit #8 did not return the statement and she did not discuss the statement with them again;
- she has not complained about noise from any other rental unit;
- she has provided a written account of the dates she was disturbed by the new occupants of unit #8, in October of 2016;
- in addition to the disturbances outlined in her written submission, she was disturbed on several occasions;
- on October 15, 2016, at approximately 1:30 a.m. she was disturbed by loud voices and people coming and going from unit #8;
- on November 29, 2016, at approximately 2:00 a.m. she was disturbed by loud voices and people coming and going from unit #8;
- on December 06, 2016 she was disturbed by loud voices and people coming and going from unit #8, which started at 10:30 p.m. and ended at 2:00 a.m.;
- on December 11, 2016 she was disturbed by the occupants of unit #8 doing laundry, which started at 11:00 p.m. and ended at 12:30;
- the Landlord would not have heard the new occupants of unit #8 coming and going, in part, because his rental unit is not near that unit;
- the Landlord would not have heard the new occupants of unit #8 coming and going, in part, because he is hard of hearing;
- the Landlord would not have noticed the new occupants of unit #8 coming and going, in part, because the motion lights are not functioning; and
- the Landlord or anyone acting on behalf of the Landlord has ever asked her to stop communicating with the Landlord and/or other occupants regarding noise concerns.

In her written submission the Tenant declared that she also spoke to the occupants of unit #8 about noise on October 05, 2016 and October 10, 2016.

The Tenant is seeking compensation,, in the amount of \$1,330.00, because she alleges that the Landlord has not properly addressed her noise complaints.

The Tenant is seeking compensation, in the amount of \$1,330.00, due to the stress associated to being asked to move in accordance with a deadline imposed by the Landlord.

Analysis

Section 47(1)(d) of the *Act* authorizes a landlord to end a tenancy if a tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. A landlord bears the burden of establishing there are grounds to end a tenancy whenever a landlord wishes to end a tenancy pursuant to section 47 of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d) of the *Act*.

In concluding that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d) of the *Act*, I was influenced by the absence of evidence to corroborate the Agent for the Landlord's testimony that the Tenant has complained of noise from each suite or to refute the Tenant's testimony that she has only complained of noise coming from unit #8.

In concluding that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d) of the *Act*, I was influenced by the absence of evidence to corroborate the Agent for the Landlord's testimony that the Tenant has complained about noise to occupants of units other than unit #8 or to refute the Tenant's testimony that she has only complained about noise to occupants of unit #8.

On the basis of the undisputed evidence, I accept that the Tenant has frequently contacted the Landlord to report noise caused by the new occupants of unit #8. I find that the Tenant has been genuinely disturbed by the noise levels in that unit and that she has the right to bring her concerns to the attention of the Landlord, until such time as the Landlord tells her to cease.

On the basis of the Tenant's testimony and her written submission, I find that the Tenant has discussed her noise concerns with the current occupant(s) of unit #8 on at least four occasions since October 01, 2016. Given that the Tenant has been genuinely disturbed by the noise levels in that unit, I find that she has the right to bring her concerns to the attention of the occupants, until such time as the Landlord tells her to cease.

I accept the Tenant's testimony that neither the Landlord nor anyone acting on behalf of the Landlord has ever asked her to stop communicating with the Landlord or other occupants regarding noise concerns. I find this direct evidence to be more compelling

than the Agent for the Landlord's testimony that he "thinks" his mother and brother have told the Tenant to stop reporting her concerns to the Landlord and/or other occupants.

In adjudicating this matter I have placed little weight on the undisputed evidence that the Tenant asked the occupants of unit #8 to sign a document regarding noise levels in the unit. As there is no evidence to establish that the occupants of unit #8 were pressured or harassed into signing this document, I find that the Tenant was well within her rights to attempt to gather evidence with which to dispute the Notice to End Tenancy.

In concluding that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d) of the *Act*, I was heavily influenced by the absence of any evidence from another occupant of the residential complex that would indicate they have been disturbed by the Tenant's noise complaints.

As the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(1)(d) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy that was served to the Tenant on October 11, 2016.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

A tenant who is claiming compensation for loss of quiet enjoyment bears the burden of proving that a landlord has not taken reasonable steps to protect the tenant's right to quiet enjoyment.

I find that the Tenant has submitted insufficient evidence to establish that the occupants of unit #8 are being unreasonably loud. In reaching this conclusion I was influenced, in part, by the absence of evidence to corroborate the Tenant's testimony that they are speaking in unreasonably loud voices. Corroborating evidence, such as a recording or a complaint from another occupant of the residential complex, is typically necessary when one occupant is alleging the noise level is unreasonable and the other occupant is denying the allegation.

In determining that the Tenant has submitted insufficient evidence to establish that the occupants of unit #8 are being unreasonably loud, I was influenced by the absence of evidence that corroborates the Tenant's testimony that the occupants are coming and going at various times in the late evening and early morning or that refutes the Agent for the Landlord's testimony that they are not coming and going at those times.

I note that the Tenant has submitted no evidence to corroborate her testimony that the Landlord would not hear the comings and goings due to a hearing impairment and location of the Landlord's suite or to refute the Agent for the Landlord's testimony that the Landlord does not have a hearing impairment and would have been able to hear the comings and goings.

I note that the Tenant has submitted no evidence to corroborate her testimony that the motion lights are not functional or to refute the Agent for the Landlord's testimony that the motion lights are functioning and that the Landlord would have been alerted to comings and goings by those lights.

In situations where one tenant alleges another occupant is being unreasonably loud and the other occupant denies that allegation it is difficult, if not impossible, for the Landlord to ascertain the truth without some corroborating evidence. In these circumstances I find that the Landlord acted reasonably by speaking with the occupants of unit #8, who advised the Landlord they were only speaking in the normal voices. In the absence of evidence to establish that the occupants of unit #8 are being unreasonably loud, I find that the Landlord cannot be held liable for the alleged disturbances. I therefore dismiss the Tenant's application for loss of quiet enjoyment as a result of noise from unit #8.

I find that the Landlord's attempt to end this tenancy was based on a reasonable belief that he had grounds to end this tenancy pursuant to section 47(1)(d) of the *Act* and I therefore find that he had the right to serve the Tenant with a One Month Notice to End Tenancy. A tenant has a right to dispute any One Month Notice to End Tenancy pursuant to section 47(4) of the *Act*.

When a landlord and a tenant do not agree that there are grounds to end a tenancy the parties have the right to have that matter adjudicated by an independent, unbiased party at a dispute resolution proceeding. That occurred in these circumstances and the Tenant prevailed.

Section 67 of the *Act* authorizes me to award compensation to a tenant only if I find that the tenant has suffered a loss as a result of the landlord breaching the *Act*. As the Landlord did not breach the *Act* by serving the Tenant with a One Month Notice to End Tenancy, I dismiss the Tenant's application for compensation for being served with that Notice. I note that serving a Notice to End Tenancy does not constitute a breach of the *Act* even if it is subsequently determined that a landlord did not have sufficient grounds to end the tenancy.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee for filing this Application.

Conclusion

The One Month Notice to End Tenancy that was served on October 11, 2016 has been set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenant has established a monetary claim of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution and I grant the Tenant a monetary Order for \$100.00. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the Tenant may opt to recover the \$100.00 filing fee by reducing one monthly rent payment by \$100.00, pursuant to section 72(2)(a) of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 12, 2016

Residential Tenancy Branch