



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

This hearing dealt with an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated October 05, 2016, with an effective date of November 30, 2016.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the application and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged exchange of evidence, however the tenant testified they did not receive an (1) e-mail dated October 11, 2016 from the landlord. The parties were given opportunity to mutually resolve their dispute to no avail.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Is there *sufficient* cause to end the tenancy?

Background and Evidence

The tenant submitted a copy of the Notice to End. The notice to end was issued for the following reasons;

- *Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed 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 tenant disputes the Notice to End.

The landlord claims the tenant has been engaging in loud conduct later in the evening and early morning hours and as a result the landlord has received complaints of noise from the neighbouring tenant residing below the applicant. The landlord provided into evidence a letter to the tenant dated October 05, 2016 describing their receipt of complaints of loud behaviour, music playing and excessive banging noise coming from the tenant's unit and causing concern to the neighbours. The letter also references a term as to Conduct in the tenancy agreement notifying tenants that they should endeavour to avoid loud sounds between certain hours. The landlord references this letter as a 'warning letter'. The tenant acknowledged receiving the letter on October 05, 2016 and subsequently having a conversation with the landlord sometime thereafter.

The landlord testified that 6 days later on October 11, 2016 they received a short e-mail from the same complainant stating that it was 12:43 am and could not go to sleep because they, "have constant "hammers" on my ceiling". The tenant denies knowledge of this particular e-mail. The tenant acknowledged receiving the 1 Month Notice to End on October 11, 2016. The landlord testified that they have not received any further complaints of noise since October 11, 2016.

The landlord testified they also reside in the building. The parties agree that the residential building is old, of wooden construction, and "poorly" constructed, and moreover agree it is prone to being noisy as it is poorly insulated for sound. The tenant claims that they do not intend to make undue noise and effectively state they are simply living their lives in a noisy building. The tenant testified they too experience noise from other parts of the building and acknowledge that others hear them.

Analysis

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and *sufficient* reasons.

I accept the landlord's reference to Conduct in the tenancy agreement notifies tenants that they should endeavour to avoid loud sounds between certain hours. I accept that the landlord has received complaints from another tenant in respect to the applicant's conduct. I accept that as a result the landlord issued the tenant a letter on October 05, 2016 notifying the tenant of the complaints and the nature of the complaints. I accept that 6 days later the landlord received an e-mail from the original complainant that they could not sleep because of a sound from their ceiling. I further accept the landlord's evidence that they have not received further complaints in respect to an unacceptable level of sound / noise from the tenant's unit. I find that a single complaint following the

landlord's letter of October 05, 2016, and in the absence of further complaints for 2 months thereafter does not establish a *significant or unreasonable* disturbance by the tenant.

Despite the landlord's letter of October 05, 2016 and the single complaint thereafter, as well as the term of the tenancy agreement respecting conduct, I find the sum of this evidence is not *sufficient* to end the tenancy. The landlord has not met their burden in this matter. I find that the landlord has not provided *sufficient* evidence that the Notice to End was for sufficient reason as stated in the notice to end and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, **I Order** the Notice to End dated October 11, 2016 is cancelled, or set aside. If necessary, the landlord is at liberty to issue a Notice to End for sufficient and valid reason(s). As the tenant was successful in this application they are entitled to recover their filing fee.

I Order that the tenant may deduct **\$100.00** from a future rent in satisfaction of the filing fee for this matter.

Conclusion

The tenant's application is granted. The landlord's Notice to End is set aside and is of no effect. The tenancy continues.

This Decision is final and binding on both parties.

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: December 12, 2016

Residential Tenancy Branch