



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC

Introduction

The proceeding is in respect to an application by the tenant for dispute resolution pursuant to the *Residential Tenancy Act* (the Act) to cancel the landlord's notice to end tenancy for cause. This matter was first convened on October 26, 2016 and reconvened to this date due to time. The original hearing was attended by the landlord and the tenant. A resulting Interim Decision was rendered summarily outlining and guiding the proceeding. At the original hearing the parties had agreed to the exchange of evidence to that date. Both parties appeared for the reconvened date and provided respective evidence. The tenant was represented by legal counsel. The parties were provided opportunity to mutually resolve their dispute to no avail.

The tenant provided an abundance of evidence unrelated to their application: before and after the original hearing date. It must be noted that the Interim Decision clearly states I will not consider evidence unrelated to the application and that neither an amendment nor additional document evidence could be submitted to this matter or accepted *after* the original hearing date. In spite of my Interim Decision the tenant continued to submit documents, which I have not considered nor form part of this Decision. The focus of the hearing remained as to whether the landlord has evidence to satisfy their onus to prove they gave the tenant a valid notice to end the tenancy for *sufficient* cause.

Issue(s) to be Decided

Is the notice to end tenancy effective as to form and content pursuant to Section 52 ?

Is there *sufficient* cause to end the tenancy ?

Background and Evidence

The tenancy started approximately 15 years ago.

Both parties submitted a copy of the Notice to End in dispute. The Notice is dated August 25, 2016 with an effective date of September 30, 2016 and was issued for the reasons prescribed pursuant to **Section 47(1)(d) and (h)** of the Act;

- *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 landlord relayed testimony of a long disputatious history between the landlord and tenant. The landlord testified the tenant has exhausted the landlord's patience and good will by their intrusive, inappropriate, annoying and generally time consuming behaviour in respect to issues of the tenancy and interaction with other tenants. The landlord testified that as a result interaction between the tenant and the rest of the building community is tense and their preference is to avoid the tenant for fear of upsetting the tenant. As further result the landlord relies on written communication with the tenant. The landlord emphasized the very long term nature of the tenant's behavioural impact on the building's community and on the preponderance of interactions with the tenant over the duration of the tenancy as being sufficient reasons to end the tenancy.

It was emphasized to both parties at the outset of the hearing that I will not consider the 15 year tenancy relationship as a supporting framework (cause) for issuing the Notice to End. I emphasized that the tenancy relationship had been scrutinized before in an Arbitrator's Decision of 2012 and that I would consider events over the 12 months *prior* to a defining incident of mid - July 2016 as the reasonable background for ascertaining the validity of the current Notice to End. It was equally emphasized that events after issuing the Notice to End of August 2016 are not relevant and are not considered.

The landlord cites in their evidence that the tenant is "ill suited" for their environment as also supported by some of the tenant's community resources and health professionals. The landlord cites there have been numerous problem interactions between the tenant and the landlord and in relation to other building occupants; however that primarily one family residing directly above the tenant has been the tenant's "target" which culminated

in a defining incident in mid-July 2016, spurring the Notice to End at hand. As a result the landlord thinks both the tenant and the landlord would benefit from housing more suitable to the tenant's personal needs in respect to their anxiety disorder; and have repeatedly suggested this course to the tenant in writing over the past several years, including by mutual agreement. In fact, a Mutual Agreement to End, dated and pre-signed by the landlord, accompanied the current Notice to End.

The landlord provided a copy of an Arbitrator's Decision respecting the parties dated November 2012 in respect to the landlord giving the tenant a 1 Month Notice for cause because of inappropriate conduct by the tenant toward a contractor for the landlord and, in the landlord's discretion, contravened the conduct clause within the tenancy agreement. The previous Decision found the tenant breached the conduct clause but the evidence was insufficient to end the tenancy. The landlord relies on the previous Decision to stress that the tenant was duly warned to alter their approach toward their living situation and has since again gone too far. The landlord again cites the same Conduct clause (#17 of the tenancy agreement) in respect to the current Notice to End to augment the landlord's assertion of interference and disturbance of another tenant in particular within the building as the root of the current Notice to End.

The landlord testified that as defining to the landlord's reason for seeking an end to the tenancy is a complaint received by the landlord dated July 09, 2016 from the occupant residing directly above the tenant. The landlord characterizes the incident of the complaint as the tenant again targeting the upstairs occupant and bullying the complainant's children in the absence of the parents. The landlord provided the complainant's letter and the complainant appeared in the hearing as witness RF. The complainant recounted their children's interaction with the tenant. The tenant had knocked on the complainant's door and spoke to the 8 year old and their teenage brother (the children) about noise emanating from the upstairs unit as a result of one of the children playing / practicing drumming on a drum set: an incident occurring in late afternoon although reported as bothersome to the applicant tenant as they were trying to sleep. The complainant characterized the tenant's interaction with their children as unreasonable given their need to practice, and that it was during the day. The complaint letter suggests a long standing conflict and anxiety between the two tenants. The applicant tenant strongly disputed they were inappropriate in their interaction with the children and was not aware the parent was not home. The tenant testified they simply wanted to address the noise and spoke appropriately to the children and that there was no bullying. They testified the interaction was brief, they were kind to the children, respectful and polite toward them, and that the children were not upset. The tenant's counsel highlighted that neither the children's parent nor the landlord representative was present during the interaction and had no direct knowledge of the

occurrence and their characterization of the account is effectively hearsay and should not be relied upon. The tenant testified that in their opinion they acted on the landlord's own guidance and instructions contained in the landlord's tenant handbook to resolving disputes between tenants. The tenant provided a copy of the respective part of the handbook titled Home Life and Community Living, which states as follows.

Resident Disputes & Conflict Resolution

Occasional disagreements and conflict are the reality of living in close community. If disagreement should occur (i.e. loud music, etc.) we first encourage you to personally and respectfully speak to the offending party before contacting the manager. A polite request to turn the music down, for example, may be all that is necessary.

The landlord testified that in another incident at issue is their characterization of the tenant pressuring of a neighbour and employee (relief resident manager) to temporarily allow some furniture (2 couches) into the relief manager's partly vacant unit so as to accommodate painting in the tenant's unit. The landlord testified the tenant was told not to do this after asking the relief manager twice and making them feel unfairly put upon to deny the request. The tenant testified that they were at a loss of what to do with their furniture and asked the relief manager to help out in a manner appearing that they could and with which they agreed conditional on the landlord's approval. The tenant testified that in their opinion the landlord came to know of the situation and interfered with the opportunity which they claim they handled respectfully. The landlord provided the relief manager's version of events, which appears to state they denied the tenant's request. In respect to the same incident, the landlord characterized the tenant's behaviour as "hounding" the relief manager by approaching them in the parking area again asking to accommodate their couches. The tenant testified the relief manager had responded to their request as positive if the landlord NF agreed, but had to end the conversation. The tenant testified they were simply eager to receive an answer or be denied the painting. The landlord claims they looked for the relief landlord and upon finding them the tenant unloaded a "barrage" of issues. The tenant testified that they did not chase down the relief manager (NF), but only tried to reach them in a timely way when available, as they are not always available. The tenant testified that, "as the landlord has said, everyone avoids me here and puts me off, so what am I to do?"

The landlord provided 2 witnesses.

Witness NF, long term employee of the landlord, and a landlord, and a tenant of the residential property.

The witness was affirmed to solely provide the truth. The witness testified that the tenant is “aggressive, insulting, and has prejudice against me”. The applicant tenant is never happy, always complaining, abusive, and all approaches start out friendly and become a conflict.

The tenant’s response was that the witness acts as landlord, performs duties of a landlord and together with landlord is to retaliating against them.

Witness RF, long term tenant occupying unit directly above applicant tenant.

Witness NF is mother in law.

The witness was affirmed to solely provide the truth. The witness testified the applicant tenant went to their unit in July 2016 and disturbed their children aged 8 and 14, with knowledge they (parent), were in the building. The witness described the applicant tenant as very frightening, escalates quickly, and that their children know the tenant and about the tenant and are afraid of them. The witness further described the applicant tenant as rude, harassing and difficult to get along. The witness recounted that they always tell their children to be respectful of the tenant below, not jump up and down, and keep noise level down.

The tenant testified that the witness is associated with the landlord and is part of the landlord’s long standing dislike of them and aiding to retaliate against them. The tenant disputes the witnesses’ account of her interaction with her children as hearsay and not knowing what actually occurred. The tenant claims that as guided by the landlord’s own instructions they went upstairs to personally speak to the problem noise. “Both children opened the door. I was kind to them. I spoke to them for no more than 60 seconds. I was respectful toward them and appropriate. I have experience with children. The children were not upset and later were friendly toward me”. The tenant previously explained she bent down and spoke politely saying, “So loud, please turn it down”, and thanked the boys. “I never yelled, never bullied”. The tenant also testified the landlord is at the root of the problems, including their anxiety disorder in respect to noise and loud sounds. The tenant previously testified that the landlord is aware of their issues with noise however defends playing drums and an electric guitar with an amplifier above her suite as being reasonable, “and when I complain I am always threatened with eviction”.

Analysis

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice to End was issued for *sufficient* cause pursuant to the stated reason(s) prescribed by the Act.

I accept there is a long and disputatious history between the parties and the tenancy and personal relationships are stressed. I accept the tenant has a condition which compels them. I accept the landlord is challenged by the tenant but particularly challenged by the fact the landlord is tasked with equally having to meet the needs of all the residents of the property. I accept the landlord's characterization of the tenancy as unsatisfactory for all parties concerned, and that on this point both parties are in agreement. I accept the landlord is well aware of the tenant's needs in respect to their anxiety disorder. I accept the tenant is difficult to get along with and for this reason other occupants and representatives of the landlord avoid the tenant. I accept the landlord's reference to Conduct in the tenancy agreement notifies tenants they may not disturb or otherwise interfere with others. I also accept the tenant counsel's description the conduct clause operates at the discretion of the landlord. As a result, I accept that the landlord is the party which frames or determines if and when there is a problem, the nature of a problem, the information supporting a problem and articulates the parameters for a resolution; and, most importantly when a tenant is forced to dispute the landlord's discretion. I accept that the tenant is challenged by the landlord's discretion; especially knowing of the landlord's determination to end the tenancy and the landlord having repeatedly nudged the tenant to leave the tenancy. I find the landlord (property manager, employees, relief manager and housing society) presents to the tenant as a formidable force and that the clear lack of trust between the parties makes it near impossible to ensure an uneventful tenancy. On balance of probabilities, I find the parties have mutually interfered with one another and therefore I decline to assign a greater accountability or significance to the conduct of the tenant.

I find that the Act provides that *all tenants* are entitled to quiet enjoyment and freedom from unreasonable disturbance. I accept the landlord's evidence their living community endeavours to ensure the well-being of all their tenants, to the extent the landlord has taken care to inform their tenants how to respectfully interact in the event they experience discomfort. I accept the hearsay nature of the matter with the tenant's approach to a noise issue in July 2016. I do not accept that the landlord, inclusive of the complainant witness, sufficiently proved the tenant's conduct in that matter was less than appropriate or that they bullied the children, as is asserted. I do not find the evidence supports the tenant took advantage of a parentless scenario in approaching the noise issue in July 2016. On balance of probabilities, given the long standing and strained relationship between the tenant and the upstairs family, I find that even if the tenant had sought out the parent with their noise issue there is no guarantee the

circumstances would have been favorable for any party and would likely have provided additional fodder for dispute. I find that the landlord wants me to view a multitude of interactions over many years and in light of previous legal wrangling as an un-savable situation to be dissolved by an Order ending the tenancy. However, on the basis of the landlord's stated reason for wanting to end the tenancy, I find insufficient evidence the tenant has *unreasonably* disturbed another occupant or the landlord.

I accept that a previous Arbitrator in 2012 agreed with the landlord's position the tenant had breached a material term of the tenancy agreement, "specifically clause 17" for the reason the tenant had interfered with one of the landlord's contractors. I find no basis to connect that Decision with the circumstances at hand 4 years later.

I find that a material term is a term that both parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Simply because the parties have put in the tenancy agreement a term they deem material to end the tenancy does not make it a material term. To determine the materiality of a term, it is key to view the importance of the term in the overall scheme of the tenancy agreement. I find the importance of clause #17, in relevant part, serves to ensure the lawful rights of all tenants, the integrity of the residential property, and the right of the landlord to maintain the residential property. In those respects the clause may be considered material. I find that language which gives rise to one party's *absolute discretion* for ending the tenancy is unfair and unconscionable and cannot be relied upon as material. I find the essential aspects of Clause #17 are aptly addressed by the landlord's other reasons for seeking an end to the tenancy: *significant interference and unreasonable disturbance*. I find the remainder of the landlord's Clause #17 is not material. It must further be noted that simply breaching a material term is not cause to end a tenancy. Section 47(1)(h) prescribes that breaching a material term and not correcting it within a reasonable period may be cause.

I find that ending a tenancy is a serious matter as the consequences may be dire. I find the landlord's evidence is that in various ways the tenant provides the landlord with situations that annoy, inconvenience, interfere with, or disturb the landlord or other tenants. I find the landlord's evidence, by preponderance of definitions, that the tenant is a nuisance and the landlord wants to end the tenancy because, as they have submitted, their tolerance of it is exhausted. Subjectively for the landlord that may be. However, in the absence of a social work solution or agreed resolve the landlord seeks for me to determine if there is sufficient cause pursuant to legal statute.

I do not doubt the anxious nature and history of the tenancy relationship makes the situation feel grave to both parties, especially when their situation is raised to legal

proceeding. However, on preponderance of the evidence over the year before the Notice to End, I find the nuisance incidents in both severity and magnitude to be insufficient to establish cause so as to end the tenancy. As a result, I must grant cancellation of the landlord's Notice dated August 25, 2016. The Notice is set aside.

Despite all of the above, the tenant is cautioned they have come perilously close to losing their tenancy and their successful application is not to be relied upon as an endorsement of behaviour.

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: January 11, 2017

Residential Tenancy Branch