Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDC, OLC

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, and for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act).*

The Tenant stated that on September 20, 2016 the Application for Dispute Resolution, the Notice of Hearing, and 13 pages of evidence she submitted to the Residential Tenancy Branch with the Application were personally served to an agent for the Landlord. The male Landlord stated that he received these documents from a person acting as his agent sometime in early October of 2016. As the Landlord acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

On November 01, 2016 the Landlord submitted 14 pages of evidence to the Residential Tenancy Branch. The male Landlord stated that these documents, with the exception of the Proof of Service of the Notice to End Tenancy, were personally served to the Tenant on October 31, 2016. The Tenant acknowledged receipt of the evidence served to her on October 31, 2016 and it was accepted as evidence for these proceedings.

On October 27, 2016 the Tenant submitted 3 pages of digital evidence details and one USB stick to the Residential Tenancy Branch. The Tenant stated that in October 13, 2016 this evidence was served to the Agent for the Landlord named on this Application. The male Landlord stated that the Agent for the Landlord named on the Application provided him with an envelope from the Tenant, which he presumes was this package of evidence, but the Landlord returned it to the Tenant without opening it.

I find that this evidence was served to the Landlord in accordance with section 88(b) of the *Act* and it was accepted as evidence for these proceedings. A party cannot avoid service by refusing to accept evidence that is provided in accordance with the *Act*.

There was insufficient time to conclude the hearing on November 14, 2016 so the hearing was adjourned. The hearing was reconvened on January 03, 2017 and was concluded on that date.

At the hearing on November 14, 2016 and in my interim decision of November 14, 2016 the Tenant was advised that she may re-serve the Landlord with the evidence she submitted to the Residential Tenancy Branch on October 27, 2016. At the hearing on January 03, 2017 the Tenant stated that she re-served this evidence to the Landlord, via registered mail, on November 21, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Landlord stated that he was able to access the digital recordings on the USB stick that was served to him by the Tenant. The parties were advised that I was unable to open the files on the USB stick at the time of the hearing. They were advised that I would attempt to open those files after the hearing and, if I was able, I would listen to those digital recordings after the hearing concluded.

After the hearing on January 03, 2017 I attempted to open the USB stick on two different computers and I was unable to do so. As I was unable to access this digital evidence I decline to consider it, pursuant to rule 3.10 of the Residential Tenancy Branch Rules of Procedure which reads, in part:

> The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

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

Issue(s) to be Decided

Should the One Month the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?
Is the Tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in November of 2012;
- the Tenant agreed to pay monthly rent by the first day of each month;
- the Tenant's son who is referred to in this decision has autism;
- on September 12, 2016 the Tenant was personally served with a One Month Notice to End Tenancy for Cause;
- the Notice to End Tenancy for Cause declared that the Tenant must vacate the

rental unit by October 31, 2016; and

- the reasons for ending the tenancy cited on the Notice to End Tenancy for Cause were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The Landlord wishes to end this tenancy, in part, because the Tenant has repeatedly reported that her neighbour in unit #2 was being excessively loud.

In regards to the issue of noise the male Landlord stated that:

- the Landlord has no reason to conclude that the neighbour is being excessively loud;
- he believes the reports of excessive noise are being exaggerated by the Tenant;
- in July the Tenant informed the police that that her neighbour in unit #2 was being excessively loud without first reporting it to the Landlord; and
- the police could not substantiate that report.

In regards to the issue of noise the Agent for the Landlord stated that:

- on at least one occasion in July of 2016 she attended in the vicinity of unit #2 shortly after the Tenant reported excessive noise and she could not hear any noise coming from the unit;
- on at least one occasion in August of 2016 she attended in the vicinity of unit #2 shortly after the Tenant reported excessive noise and she could not hear any noise coming from the unit;
- on at least two occasions in September of 2016 she attended in the vicinity of unit #2 shortly after the Tenant reported excessive noise and she could not hear any noise coming from the unit;
- in September of 2016 the police came to her door and advised her that the Tenant had reported excessive noise in unit #2, which they determined to be unfounded;
- she has never heard excessive noise coming from unit #2;
- she has spoken with the occupant of unit #2 and he informs her he does not play his television or music loudly; and
- she was too busy to respond to each individual complaint, although she told the Tenant on many occasions that she could not hear noise coming from unit #2.

In regards to the issue of noise the female Landlord stated that:

- in February of 2016 the Tenant reported excessive noise in unit #2;
- when a former agent for the Landlord investigated that report she determined that the noise was coming from across the street.; and
- the same former agent for the Landlord investigated approximately four other reports of noise in April and she concluded the reports were unfounded.

In regards to the issue of noise the Tenant stated that:

- she has reported that her neighbour in unit #2 is being excessively loud approximately 10-12 times in June, July, August, and September;
- she believes the neighbour is purposely playing loud music in an attempt to bother her son who has autism;
- she is certain the noise has been emanating from unit #2 whenever she has reported her noise concerns to the Landlord; and
- the Agent for the Landlord never told her that she could not hear noise coming from unit 2.

The Tenant submitted no independent evidence to corroborate her concerns that her neighbour is excessively loud on occasion.

The Landlord submitted an email from the occupant of the unit on the other side of unit #2, which is unit #1. In this email the author declared that he has "no issue with unit 2 and the music he plays" and that the only issue he has is the "conflict between the 2 of them which is getting tiresome to deal with".

The Tenant contends that her unit shares a wall with the living room of unit #2 and that a stairway separates the living room of unit #2 from unit #1. The Legal Advocate for the Tenant argued that this separation may explain with the occupant of unit #1 is not bothered by the noise in unit #2.

The Landlord stated that unit #2 shares a wall with the living room of unit #1 and that a stairway separates the living room of unit #2 from the Tenant's unit. He argued that if the noise from unit #2 is unreasonably loud both sides would be bothered by the noise, regardless of the location of the stairwell.

The Landlord wishes to end this tenancy, in part, because the Tenant's son has climbed onto the roof and, in doing so, has damaged the gutters.

The male Landlord stated that the son was seen climbing onto the roof in July of 2016. The Tenant stated that her son did not climb onto the roof in July of 2016; he climbed part way onto a ledge in June of 2016; and he did not damage the gutters when he climbed part way onto a ledge.

The Landlord wishes to end this tenancy, in part, because the Tenant's son was banging on a bathroom window with a stick.

The Landlord submitted a written record of incidents at the residential complex, which is signed by four people who work at the complex. In this written report the authors declare that on June 22, 2016 the Tenant's son was opening a neighbour's bathroom window; banging on the window with a stick; that "it was enough to cause a disturbance"; that he could have caused damage; and that he could have injured himself or others.

The Tenant stated that on June 22, 2016 her son was tapping on her bathroom window with a stick; that her son's father intervened; that the matter was reported to the police; and that a subsequent investigation showed that her son was being properly supervised.

The Landlord submitted a letter from the occupants of unit #2. In this letter the author(s) declared, in part, that a neighbour told the male occupant of unit #2 that the Tenant's son opened "his" bathroom window; that the son banged on the bathroom window of unit #2 with a stick; and that the neighbour told him to stop banging.

The Landlord wishes to end this tenancy, in part, because the Tenant's son has attempted to enter unit #2 without being invited. He stated that on April 22, 2016 the Tenant's son knocked on the door of unit #2 but the occupant of that unit would not allow the son to enter.

The Landlord stated that in May of 2016 the Tenant's son lost his ball on a window ledge, which the occupant of unit #2 recovered for him. The occupant of unit 2 submitted a written account of this incident in which the occupant stated that the occupant had to physically block the son from entering the unit as he wanted to recover the ball himself.

The Tenant stated that she was present when her son's ball was being recovered from the ledge and that her son was not attempting to enter unit #2 on that day.

The Landlord stated that an agent for the Landlord advised the Tenant that her son had attempted to enter unit #2. The Tenant stated that an agent for the Landlord did not express concerns about this to her.

The Landlord wishes to end this tenancy, in part, because the Tenant's son has been banging and hammering in the basement of the rental unit. In the letter from the occupant of unit #2 the author(s) declared, in part, that they have heard hammering and chiseling in the basement on several occasions and they have overheard the Tenant telling her son to stop that behaviour.

The Landlord stated that an Agent for the Landlord inspected the rental unit on April 28, 2016 and could not locate any damage related to the hammering and chiseling. He stated that the Agent advised the Tenant of the noise complaint during that inspection.

The Tenant stated that she was not told about the hammering and chiseling until these proceedings commenced. She stated that she was not informed of a reason for the house inspection on April 28, 2016. The Tenant submitted a copy of the notice of inspection, which does not indicate a reason for the inspection.

The Landlord wishes to end this tenancy, in part, because the Tenant's son has been touching himself inappropriately. In the letter from the occupant of unit #2 the author(s)

declared, in part, that the male occupant observed the touching in April of 2016 and that he told him to stop three times before the Tenant apologized and removed her son from the area. The Landlord stated that he "thinks" the occupants of unit #2 told him that something similar happened in June of 2016, although he has no details regarding that incident.

The Landlord stated that he did not discuss the allegations of inappropriate touching with the Tenant and he does not know if anyone acting on his behalf discussed those incidents with her. He believes the police spoke with her about these incidents.

The Tenant stated that neither the police, the Landlord, nor an agent for the Landlord discussed the inappropriate touching with her and that she was unaware of these allegations until these proceedings commenced. I note that in her written submission that Tenant declared that the police told her that they had received a report regarding her son masturbating.

The Landlord wishes to end this tenancy, in part, because the Tenant called an occupant of unit #2 an "asshole" and her son repeated that insult. The Landlord stated that neither he nor an agent acting on his behalf discussed this incident with the Tenant.

The Tenant stated that she does not recall this incident nor did anyone discuss it with her prior to the commencement of these proceedings.

The Tenant is seeking compensation for loss of quiet enjoyment because the Landlord did not properly respond to her noise complaints. In support of this claim the Tenant stated that:

- the Landlord's lack of response to her repeated noise complaints has been very frustrating;
- during conversations with the Agent for the Landlord, some of which were recorded, the Agent told her that she agreed that the occupant of unit #2 was being provocative; that the Tenant might be evicted because of all the conflict; and that the parties would have to resolve their dispute themselves;
- she has been unable to contact the Agent for the Landlord since November 21, 2016 as the Agent has blocked her calls and she cannot leave as message**;**
- she has been unable to contact the Agent for the Landlord since November 21, 2016 as the Agent will not answer her door; and
- she has been previously told that she should not contact the Landlord directly.

In regards to the claim for compensation for loss of quiet enjoyment the Landlord stated that:

- he has listened to some of the recorded conversations submitted in evidence by the Tenant;
- the people being recorded were not aware that the Tenant was recording the conversations;
- he believes those recorded conversations show that his agent is trying to

mediate the conflict between the Tenant and the occupant of unit #2;
- the conversations show the agent is frustrated with the Tenant and the occupant of unit #2;
- he believes the Tenant is "goading" the agent into making some of the statements that were made;
- he is not aware that the Tenant was told she should not contact him directly;
- the Tenant can contact him directly if she is unable to contact his agent; and
- he has never been told that the Agent for the Landlord is refusing to communicate with the Tenant.

In regards to the claim for compensation for loss of quiet enjoyment the Agent for the Landlord stated that:

- based on her observations she was unable to learn "the truth" regarding the noise;
- during one conversation with the Tenant she agreed that the occupant of unit #2 was provoking the Tenant's son;
- she agreed with this suggestion because at that point she was angry and believed it was possible;
- she became frustrated with the number of noise complaints she was receiving and on one occasion she said "something similar to" letting the parties fight it out; she may have told the Tenant she would be evicted because the Tenant was "ticking her off";

In regards to the claim for compensation for loss of quiet enjoyment the Legal Advocate for the Tenant stated that:

- there have been no issues with this tenancy until the occupant of unit #2 moved into the complex in January of 2016; and
- she has observed physical changes in the Tenant which she contributes to the Landlord's failure to respond to the Tenant's noise concerns.

During the hearing on January 03, 2017 the Tenant used her telephone to telephone the Agent for the Landlord. Although the Agent for the Landlord did not answer the telephone, it was clear that the Tenant's telephone number was not blocked and that she had the ability to leave a message.

Analysis

Residential Tenancy Branch Policy Guideline, 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.

When one party makes an allegation and the other party denies the allegation, it is often difficult for a third party, such as a landlord, to determine the facts without corroborating information. In these circumstances I find that the Landlords responded reasonably to the Tenant's noise complaints by attending in the vicinity of unit #2, by speaking with other neighbours, and by speaking with the occupants of unit #2, who denied the allegations. In the absence of evidence that establishes the occupants of unit #2 are making an unreasonable amount of noise, I find that the Landlord was unable to assist the Tenant.

In concluding that there was insufficient evidence for the Landlord to determine that the occupants of unit #2 are causing an unreasonable amount of noise, I was heavily influenced by the absence of any independent evidence that corroborates the Tenant's testimony that the noise is unreasonable.

I find that the information provided to the Landlord by the occupant of unit #1, who also shares a wall with unit #2, made it difficult, if not impossible, to conclude that noise emanating from unit #2 was unreasonable. I agree with the Landlord's submission that if the noise from unit #2 was unreasonably loud, both sides would be bothered by the noise regardless of the location of the stairwell.

As the Landlord responded reasonably to the Tenant's noise concerns, I find that she is not entitled to compensation for a breach of her right to quiet enjoyment as a result of noise emanating from unit #2.

In adjudicating the claim for compensation for loss of quiet enjoyment I find that the Landlord could have acted in a more professional manner by communicating more formally and consistently with the Tenant and the occupant of unit #2, preferably in writing, regarding the on-going complaints. Regardless of the Landlord's failure to formally respond to each complaint made by the parties and the Landlord's inability to resolve the frequently unsubstantiated reports I find that the efforts made by the Landlord were reasonable and that the Tenant is, therefore, not entitled to compensation.

In adjudicating the claim for compensation for loss of quiet enjoyment I have placed no

weight on the Tenant's testimony that the Agent for the Landlord is blocking her telephone calls. On the basis of the telephone call made during the hearing on January 03, 2016, that allegation is clearly unfounded.

In adjudicating the claim for compensation for loss of quiet enjoyment I accept that the conflict between the Tenant and the occupants of unit 2 has significantly impacted the Tenant's quiet enjoyment of the rental unit. I find that the Landlord cannot be held liable for that breach, however, as it would be difficult, if not impossible, for the Landlord to determine who is responsible for the conflict on the basis of the information that has been presented to the Landlord.

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. I find that when the Tenant was served with the One Month Notice to End Tenancy for Cause the Landlord did not have the right to end the tenancy on the basis of the Tenant's repeated reports of noise complaints.

Generally speaking tenants have the right to report concerns about noise to their landlord or to the people responsible for the noise. I find that a tenant has the right to continue to report those concerns until such time as the problem is rectified or until the tenant is told that continuing to report noise concerns to the other party or the landlord will be considered harassment and could end the tenancy if the report cannot be corroborated.

In these circumstances I find that the Landlord did not clearly inform the Tenant that he had investigated her reports; that he had found all of her reports to be unfounded; and that her tenancy would be in jeopardy if she continued to make unsubstantiated reports to the Landlord or the occupant of unit #2. Rather, the Agent for the Landlord told the Tenant on one occasion that she and the occupants of unit #2 should "fight it out", or words to that effect.

The Agent for the Landlord acknowledges that she did not respond to all of the Tenant's complaints and the Tenant alleges that the Agent for the Landlord never told her that she did not hear excessive noise coming from unit #2. I find that if the Landlord had clearly informed the Tenant that further unsubstantiated complaints could not be made, it is possible that the Tenant would not have continued to report her concerns.

Even if I accepted that the Tenant's son had engaged in all of the activities alleged by the Landlord, I would not conclude that the Landlord had grounds to end the tenancy in accordance with section 47(1)(d)(i) of the *Act.* Given that the incidents are relatively minor, that there is no evidence of violence, that the behaviours are not uncommon for a person who has autism, that the son is not causing significant property damage, and the Tenant appears to be responding appropriately when the behaviour is reported to her, I do not find that the disturbances are unreasonable. To end on the basis of such behaviors, in my view, suggests a level of intolerance for persons with disabilities that is

unacceptable in Canadian society.

Section 47(1)(e) of the *Act* authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord. I find that the Landlord has failed to establish that the Tenant or a person permitted on the property has engaged in illegal activity and I therefore find that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(e) of the *Act.*

As the Landlord has failed to establish grounds to end the tenancy pursuant to sections 47(1)(d)(i) or 47(1)(e) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy for Cause that is the subject of this dispute.

To provide some clarity to this tenancy, I find that the Landlord may have the right to end this tenancy in the future if the Tenant complains again about noise coming from unit #2 to the Landlord, to the police, or to the occupants of unit #2, **unless she has corroborating evidence from an unbiased, independent source**. Conversely, the Tenant may be entitled to compensation in the future if the Landlord does not protect her right to quiet enjoyment if she presents him with such evidence.

Conclusion

As the One Month Notice to End Tenancy for Cause has been set aside, this tenancy shall continue until it is ended in accordance with the *Act.*

The Tenant has failed to establish a monetary claim and her application for compensation is dismissed.

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 05, 2017

Residential Tenancy Branch