



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy for cause dated February 20, 2017 and received the same day. The Notice was given pursuant to s. 47(1)(d)(i) of the *Residential Tenancy Act* (the “Act”), alleging that the tenants or a person permitted on the property by them have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Proof of that claim justifies the ending of a tenancy under s. 47.

The landlord claims that the tenants disturbing the upstairs tenant, Ms. M.D.

In the second application the landlord seeks an order of possession pursuant to that Notice.

The tenants advanced a monetary claim at the hearing. Their application for dispute resolution does not disclose a monetary claim and so that claim will not be dealt with at this hearing. The tenants are free to re-apply in that regard.

Issue(s) to be Decided

Does the evidence show on a balance of probabilities that the tenants have significantly interfered with or unreasonably disturbed the upstairs tenant Ms. M.D.?

Background and Evidence

The rental unit is a basement suite in one side of a duplex. The tenancy started in October 2016 for a one year term. The monthly rent is \$1200.00. The landlord holds a \$600.00 security deposit and a \$600.00 pet damage deposit.

The upstairs tenant Ms. M.D. testifies that she has lived in her unit for three years or more. She lives with her two daughters and an infant grandchild. She says that two sets of tenants preceded Mr. T. and Ms. G. and that they all got along very well together.

She complains that even though the property is a “no smoking” property, she smells the lower tenants’ cigarette and marijuana smoke. She is asthmatic and the smoke disturbs her. She has not witnessed the tenants smoking on the property but has found cigarette butts out by the parked vehicles at the edge of the property.

On of her first interactions with the tenants was when she found that Mr. T. had set up her fan stored in the garage and was running it in an attempt to dry firewood that had been left by another tenant. He had not asked permission to use her fan.

She says the tenants are very loud. They fight and swear and the noise can be clearly heard in her suite.

The tenants’ friends are always there. One of them came to her door at 7:00 a.m. to ask if she’d received some mail for him. He had apparently used the tenants’ address for his mail. The parties share a mailbox located outside the upper tenant’s door.

The tenants’ guests smoke in front of the house and look at her daughter’s bedroom window.

She says she has tried to minimize noise coming from her suite.

She has kept a diary of events in the recent past.

On February 4, while her granddaughter was playing, there was banging from the lower suite and the radio or TV was turned up “full blast.” She called the landlord, who told her to “film” it, but she did not.

On February 7, she could hear a verbal argument between the tenants. She says that goes on a lot.

On February 8, the tenants were banging on the walls when her granddaughter made noise. She says the banging scares her daughter.

On February 10, one of the tenants slammed the mailbox very loudly.

On February 11 Mr. T. stomped past her front door in the early morning. Photographs provided by the tenants show the path from the front street, around the home to the doors of both suites. In order to reach the steps down to the lower suite, the path winds in front of the upper tenant's door. The upper tenant's wooden porch is beside the path and up two steps

Ms. M.D. says that instead of taking the path beside her porch, Mr. T. walks onto and across her porch then down onto the path again. There is no need for him to take this alternate route and she says he stomps loudly on the porch when he does. She feels that his sole purpose is to antagonize and intimidate her and her family in an effort to make them move out.

Later in the day on February 11 she approached the tenant Mr. T. in the park across from the property and confronted him about the banging and the stomping on the porch. She says that he would not engage with her but simply smiled and laughed at her.

She says that when she does see Mr. T. he gives her aggressive and intimidating looks. She says that when he walks by her suite he looks back and stares into her windows.

Ms. M.D. also testified about her concern over fleas the lower tenants' dogs might have. She says the lower tenants aren't picking up their dogs' feces in the yard.

She says she is afraid of Mr. T.'s aggressive behaviour and that on one occasion Ms. N. came by and apologized for him.

The landlord Mr. G. has not observed the behaviour complained of. He says that in the past two months things have erupted between the upper and lower tenants.

He has intervened between the two and has sided with the upper tenant Ms. M.D. He considers that Ms. M.D. has been a "great" tenant for four years and everything was fine between the upper and lower tenants before these tenants. In his view, when dealing with Mr. T., Mr. T. is cordial but will say what he thinks Mr. G. wants to hear. He considers Mr. T. is belligerent and enjoys being so. Those are the reasons he has chosen to accept Ms. M.D.'s version of events and issue the Notice in question.

Mr. T. testifies that he tries to stay away from Ms. M.D. He says she accosted him in the park on February 11 and called him a “loser” and an “idiot.” He says he never smokes on the property. He says that Ms. D.F. and her daughter’s fighting disturbs him.

Mr. T. denies staring into the upper rental unit windows.

He considers that Ms. M.D. is actually harassing him, not the other way around and that she is mentally unstable.

He produces a variety of photographs to show that the upper tenant, though bagging her dog's droppings, is leaving the bags outside.

The tenant Ms. N. testifies to merely say she agreed with what Mr. T. had said.

Analysis

The landlord Mr. R.G. did not sign the written tenancy agreement. Only his former partner Ms. K.K. signed it as a landlord. However, I accept that he has been appointed and is acting as her agent in regard to this property and that the tenants had been informed of that agency prior to the Notice being issued.

The ending of a tenancy is a very serious matter and significant, cogent evidence will be required to establish grounds for eviction.

There is a paucity of objective evidence in this case to corroborate and support the stories of either upper or lower tenants, though the photographs provided by the tenants were of considerable assistance in determining the location of doors and paths.

This matter falls to be decided on the competing versions of events given by the tenants. An assessment of the credibility of each witness in such circumstances, especially in a hearing where the parties cannot be observed, is usually not possible.

Ms. M.D. gave her testimony in a calm and forthright manner, without apparent embellishment.

Mr. T. gave plausible responses and explanations to the allegations, yet his testimony was peppered with what can only be described as derogatory laughter when referring to Ms. M.D. and her evidence. The tone of his testimony left the impression that he is

used to getting his own way. It was the tone of a bully. The fact that he took and used the upper tenant's fan without permission supports this assessment.

From the evidence it is plain that there is little if any sound proofing between the two apartments and so it is difficult to assess what level of noise would be excessive in the circumstances. There is a lack of any audio evidence of the disturbing noise; evidence that is easily obtained in these days of the cellphone. The evidence does not satisfy me that the lower tenants are significantly interfering with or unreasonably disturbing the upper tenant by making banging noise or by their voices.

The matter of fleas is of no significance. There is not proof that the tenants' dogs have fleas or that it somehow significantly interfered with or unreasonably disturbed the upper tenant.

Similarly the complaint about visitors and guests does not rise to the level of justifying an eviction.

It has not been proved that the tenants are smoking on the property or even that smoking on the property is prohibited.

Whether or not Ms. M.D. is picking up her dog waste bags right away is inconsequential to the question of whether or not the lower tenants are significantly interfering with her or unreasonably disturbing her.

I accept Ms. M.D.'s evidence that Mr. T. is intentionally walking across her porch instead of the path he should be using and that he is stomping his feet when he does so. I accept her evidence that he glares in the windows in an intimidating manner when passing by. I accept her evidence that she confronted him about it in the park on February 11 but he continued the behaviour. I find that he is doing these things in an effort to aggravate her and to intimidate her.

These actions are an intentional and unreasonable disturbance.

Conclusion

The tenant Mr. T. has unreasonably disturbed another occupant, Ms. M.D.. The Notice to End Tenancy is a valid Notice and will cause this tenancy to end on March 31, 2017.

In accordance with s. 55 of the *Act*, the landlord will have an order of possession for one o'clock on that day.

I award the landlord recovery of the \$100.00 filing fee for his application and authorize him to recover it from the security deposit he holds.

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: March 28, 2017

Residential Tenancy Branch