



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: OPC CNC OLC RP RR FF

Introduction:

Both parties made Applications and both attended and gave sworn testimony. The tenant agreed they received personally the Notice to end Tenancy dated March 22, 2017 and the Application for Dispute Resolution by registered mail. The landlord agreed they received the tenant's Application by registered mail also. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- c) To cancel a Notice to End Tenancy for cause;
- d) That the landlord obey the Act and do repairs;
- e) Compensation of a rent refund for repairs not done; and
- f) To recover the filing fee.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession?

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that the landlord has neglected to do repairs and they are entitled to compensation?

Background and Evidence:

Parties, eight witnesses and counsel for the tenant attended this two hour conference call and were given opportunity to be heard, to present evidence and to make

submissions. A significant amount of oral testimony was given and considered in the Decision but not all is referenced.

The undisputed evidence is that the tenants commenced living in the premises July 1, 2016 on a fixed term lease to December 31, 2016 which then went to a month to month lease. A security deposit of \$925 was paid and rent is currently \$1850 a month. It is undisputed that this is a family type complex with many young children and the tenants occupy an end unit sharing a wall with only one neighbour. This neighbour is the one that has complained to the landlord that her peaceful enjoyment has been significantly interfered with and unreasonably disturbed by the tenants, their children and guests. In many emails she notes the noise level from her neighbours is extremely high. She said they yell from the house to the carport with the door open, the husband and wife yell and they have visitors over frequently and they talk very loud. She said the young children sometimes cry at night for 20 minutes before the parents handle it. It is very disruptive to her daughter who has to get up about 4:30 a.m. She said she turns up her TV to try to cover the noise. The landlord said she had brought over a recording which showed the noise level was so high that her dishes were rattling in the cupboard. She described it as "like a train". They have given many verbal warnings to the tenant and issued a written warning but the problems continue. They don't want to evict people but it is their duty to protect the peaceful enjoyment of the other tenants.

The neighbour also said the tenant's children's actions are a problem. They have 3 very young children and one of them rode into her car in her carport with his bike and the mother was dismissive. She said the children are unsupervised, they run on the road and she has heard drivers stop and tell them that they are going to get hit. In addition, she says the family constantly leaves a stroller and car seats in her half of the shared carport which is a great inconvenience when she is using her car.

The landlords describe how the tenants are putting their property at significant risk. The mother had some pizza boxes in the oven and they caught fire. Fire trucks attended which further disrupted the peaceful enjoyment of people in the complex and their property was put at significant risk. The property manager said the male tenant was quite rude and aggressive to her about who was going to pay for repairs after the fire. They said the tenants' children running outside unsupervised put their insurance at risk also for they are in danger from drivers in the complex. The neighbour said that the tenants did not even knock on her door to warn her of the fire and when she saw the smoke billowing, the female tenant refused to tell her the problem. She was forced to get her daughter out of the shower so they could escape outside. On cross examination by Counsel, she said she has heard the loud noise from the time the tenancy commenced. There are people there all the time and meetings in the unit throughout

the week as well as weekends. She agreed with Counsel that she had called the Ministry about the family's behaviour with the children.

The tenants had a number of witnesses, one of whom lives in the same complex but not within hearing distance, according to the manager. The witness said he belongs to the same religious community whose building is nearby. He has never seen the tenants screaming at each other or the children being extremely noisy. He said a month ago, he went to the complaining neighbour's door with the tenant to have a talk with her, apparently because of a suggestion from management to resolve the issues, but she would not talk to them. The manager said she found it intimidating and scary to have two men come to her door and want to come in. The witness said they were not looking to enter at all. He visits the tenants occasionally for Friday night dinner and other times and often, there is no one else there. He is not a neighbour but can see their door from his door.

Another witness for the tenant said he visits multiple times but the latest he has been there is 11 p.m. He works in the religious institution with the male tenant. He has never met the neighbour but has heard her yell foul language at the children when they are playing outside in the back common area. He said the male tenant holds a high position in the religious institution and he is of outstanding character. False accusations could tarnish his reputation. He would leave them to look after his house if he were away.

Another witness for the tenant said she has never seen any yelling or screaming. They are good parents and the kids are normal. However, she has heard the neighbour tenant banging on the walls. She said she was at their home about once a week July to September and not so much now.

The male tenant gave evidence that the banging of the walls from the neighbour started a few days after they moved in and has continued. He said he complained a few times but the complex is in a nice area near his religious institution and he likes being there. He said the neighbour will bang at 6 or 7 p.m. and they are a young, normal family. He says the youngest sometimes wakes up at 2 or 3 a.m. and cries but they attend to her and get her quieted. He counsels young families as part of his job. He said the fire occurred when his wife attempted to heat up pizzas for a meeting at their institution and the boxes caught fire. The smoke detector is upstairs and it did not go off immediately.

The landlord said they had other complaints from the neighbours in the cul de sac but they won't come forward. The property manager argued with the male tenant about his responses when the fire happened. She found it very stressful to talk to him. He said maybe he said he would take it to court for he was under a lot of stress.

Emails from the male tenant concern complaints from August 2016 and March 2017 about the neighbour banging on the walls. He agrees the children are noisy sometimes but they are children and he acknowledges the youngest sometimes cries in the middle of the night. He says his children make noise as children do and the landlord knew they had children when they moved in. Emails from the neighbour date from August 2016 also. In August she recounts the children taking items from her patio table, the loud voices of the adults, yelling, the baby awake between 2-3 a.m. crying with the window open until they bang on the wall; she notes she and her daughter are both sleep deprived. She notes the large number of visitors who also have kids running around unsupervised and the problems with the tenant's boy riding his bike into her car and playing with the door handle. She notes the volatility of the tenants and her fear of retaliation. Similar complaints continue in September, to April with a formal letter to the landlord in March 2017 noting it is their responsibility to protect her peaceful enjoyment and summarizing the many disturbances she has endured from these tenants, their guests and children.

The manager submitted they have no vacancies so there is no opportunity to move either of the tenants. Also, she said she would be moving the problems to someone else which is irresponsible. She pointed out that the neighbour tenant had been in her unit since 2014, she had three teens as neighbours but they had no complaints from her ever. She pointed out that the tenant's and witnesses' testimony indicate they have a lot of visitors, the neighbour says they are very noisy, and according to section 47 of the Act, they are responsible for the behaviour of persons invited on the property by them. She also pointed out that the tenants' witnesses pointed out that they had good social behaviour but they did not live beside them and witness what went on when they were not present.

The tenants are expecting another child on July 10, 2017 and the manager said if they are given an Order of Possession, she would be prepared to have it effective August 31, 2017 on compassionate grounds. She emphasized that looking at the balance of probabilities that the tenants are significantly and unreasonably disturbing the peaceful enjoyment of their neighbour and putting the landlord's property at significant risk.

In evidence is the tenancy agreement, emails from both parties complaining about the other and the Notice to End Tenancy. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to (a) reasonable privacy, (b) freedom from unreasonable disturbance and (d) use of common areas ...free from significant interference.

Section 47 (1) (d) of the Act provides that a landlord may end the tenancy if *the tenant or a person permitted on the residential property by the tenant has*

- (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord, or ...*
- (iii) *Put the landlord's property at significant risk.*

I have carefully considered all of the evidence in this case and find on a balance of probabilities that the landlord has good cause to end this tenancy. Although the tenant had many witnesses to his good character and reputation in his religious community, that is not the question here. I find none of the witnesses are the tenants' close neighbours and I find the testimony of the one adjoining neighbour credible that she has had significant interference and unreasonable disturbance by the tenants' and their children's behaviour. The witness for the tenant from the same complex would be unable to hear and observe closely the disturbing behaviour, according to the manager. He said he was able to view their door but did not say he could hear what is going on. I find it was a valid submission by the manager that people's social behaviour is not the same as the family's private behaviour and it is their daily behaviour in their home that is causing the neighbour problems. It is true as the tenant says that children will be children but the Act does not permit them to significantly interfere with and unreasonably disturb other occupants.

I found the evidence of the property managers very persuasive as they testified that the neighbour tenant had lived in her since 2014, they never had one complaint from her and she had shared a wall and carport with the adjoining unit with a family with three teenagers. I also found it very persuasive of the level of noise as the manager described listening to a recording of it that sounded like a train and rattled the dishes in the neighbour's cupboard. I find this very significant interference with the peaceful enjoyment of the neighbour. To add to this, I find the neighbour has constantly had the tenants' young children running onto her area of the property, taking small things and riding a bike into her car. I find the high level of noise, the disturbance of sleep by a child crying often in the middle of the night and the children's infringement of the neighbour's property and privacy amounts to a *highly significant interference with and unreasonable disturbance* sufficient for the landlord to have good cause to end the tenancy. I find that the landlord is entitled to an Order of Possession. As the tenants are expecting another child in July 2017 and the landlord is willing to grant an extended date for the Order, the effective date for the Order will be August 31, 2017.

I find any one cause under section 47, if proven, is sufficient to end the tenancy. Therefore I decline to go further and consider the risk to the landlord's property or the event of the fire.

Since the tenancy is ending, I decline to order repairs or a rent rebate based on repairs not completed. I find it is not relevant to the main issue of ending the tenancy which was heard over a period of two hours. From the limited testimony on the matter, it appears there was a misunderstanding on the responsibility of the various insurers. The fire was undoubtedly caused by the tenants but apparently the insurers are involved and working through the issues.

Conclusion:

I find the landlord entitled to an Order of Possession effective August 31, 2017 and to recover their filing fee for their application.

I dismiss the application of the tenant in its entirety without leave to reapply and find them not entitled to recover filing fees due to lack of success.

I HEREBY ORDER that the landlord may deduct \$100 from the tenants' security deposit to recover their filing fee.

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: May 03, 2017

Residential Tenancy Branch