



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested an Order cancelling a 1 Month Notice to End Tenancy for Cause issued on June 9, 2017 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on August 23, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant named the Senior Property Manager, M.R. as the Landlord on their application. M.R. confirmed that she is an employee of the Corporate Landlord. Pursuant to section 64 of the *Act*, I amend the Tenants' Application to correctly note the Landlord.

Documentary evidence submitted by the Landlord confirms the Notice was posted to the rental unit door on June 9, 2017. Pursuant to section 90 documents served in this

manner are deemed served three days later; accordingly, the Tenants were deemed served June 12, 2017. The Tenants applied for dispute resolution on June 19, 2017 such that they applied within the 10 days required by section 47 of the Act. Accordingly, more time was not required pursuant to section 66(1).

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenants recover the filing fee paid?

Background and Evidence

M.R. testified that the Corporate Landlord began managing the rental building in November 1, 2013. A copy of the notice to the tenants was provided in evidence. She confirmed that the Tenants were in occupation of the rental unit at that time. She further confirmed that she did not have any record of when their tenancy began.

M.R. stated that the Landlord first began hearing complaints about the Tenants beginning in May 31, 2014. The nature of the complaints was that the Tenant, K.Y. I was yelling and swearing at the renter in the next apartment, J.M. apparently because her grandchildren were over and K.Y. was bothered by the noise made by the children. A copy of an email sent at the time was provided in evidence and indicated that the Tenant, Y.K. yelled at J.M. and used vulgar language

The Landlord then sent a letter to the Tenants on June 2, 2014 wherein the Landlord writes that K.Y. was verbally abusing and using vulgar language towards other tenants and their guests. The Tenants were warned that this behaviour was unacceptable.

M.R. stated that K.Y. then got into another argument with another renter. A letter submitted by the Landlord dated November 18, 2016 describes an altercation between the K.Y. and another person J.B. wherein K.Y. was reported to be yelling and using vulgar language towards J.B. The police were called at this time due to the altercation.

M.R. testified that K.Y. then began to have a disagreement with the new renters in the neighbouring unit (who had moved into the unit formerly occupied by the Tenant J.M.). The nature of the allegation was that K.Y. was yelling at R. and S., the tenants who live next door to the subject rental unit. As well, K.Y. is reported to bang on the walls whenever he hears noise coming from the next door unit. M.R. stated that on March 21,

2017 R. and S., complained that that they were being harassed by the Tenants who were banging on the walls and yelling at them whenever there was any noise whatsoever. They write that although they have tried to work matters out with K.Y., they feel harassed by him.

The Tenants were then provided a Final Warning by letter dated February 24, 2017 wherein the Landlord writes that the Tenant, K.Y., has been harassing the residents next door. The Tenants were reminded that it was a multi-unit building which requires a degree of compromise, and that the complaints made by K.Y. have not been reasonable.

M.R. stated that the complaints have continued from neighbours beside, below and above the rental unit as K.Y. takes it upon himself to accost those neighbours when he feels the noise from their unit (music, running water, etc.) is disruptive.

J.W. also testified. He confirmed that he is the caretaker of the building and has been for 37 years.

He stated that these Tenants, and K.Y. in particular, complains regularly about the neighbours noise, and that on three separate occasions he has gone to investigate the sound and could not even hear it. He said that as a result of K.Y.'s constant complaints, he told K.Y. not to complain to him anymore and that if he had a concern he was to bring it up with the Corporate Landlord.

J.W. stated that after he told J.W. to address his concerns with the Corporate Landlord, J.W. then started banging walls and harassing the neighbours.

J.W. stated that he was leaving on holidays for May 31, 2017, and the neighbours, R. and S. called said that they were going to give their notice to end their tenancy as they could not stand living next to the Tenants anymore. He said that they were living in their bedrooms as they were so worried about going in their living room and making noise and upsetting the Tenants. J.W. told them that they need not move out and that it was wrong for them to feel they had to go. J.W. further stated that he told R. and S. that he would stand up for them at the hearing today as what the Tenants were doing was wrong.

M.R. stated that on June 1, 2017 she received a further complaint from R. and S. wherein they stated that they were playing music and cooking and the Tenants and the Tenant, K.Y., complained to them that they were making too much noise and began banging on the wall.

M.R. stated that the reason why they issued the Notice is because the Tenants keep complaining about noise from their neighbours, have engaged in confrontational behaviour with the neighbours and are unreasonably disturbing them by yelling and banging on the walls.

In response K.Y. testified as follows.

He confirmed that he has lived in the rental unit for approximately five years.

He stated that it is simply not possible that he has been in conflict with other renters.

He stated that the incident with J. in 2014 was because the neighbour J.M. and her son were banging nails in the wall and hanging pictures for 35 minutes. He said that when he tried to speak to J. about this he was “verbally attacked by J.’s son”, and in response he “verbally attacked back”. He stated that the next evening they were banging nails again for an hour and when he again went to speak to J.M. her son “attacked him” and he “attacked back”.

K.Y. then stated that he called the Senior Property Manager, M.R., about this incident and in response M.R. also “attacked him”.

I asked K.Y. what his response was to the documentary evidence which suggested he was using vulgar language and he responded that it was in retaliation to the vulgar language he was receiving.

K.Y. also stated that J.M. was evicted three years ago for non-payment of rent and as such he no longer has conflict with her.

In response to the Landlord’s evidence regarding the November 18, 2016 incident K.Y. stated that J.B. had a history of conflict with others and it was J.B. who was yelling and screaming. K.Y. stated that J.B. sent the police to his door on “numerous occasions” for false pretenses. He said that J.B. still lives there and now K.Y. just avoids him.

In response to the Landlord’s evidence regarding the alleged conflict with the neighbours R. and S., K.Y. said that problem is the noise from their music. He stated that S. is a musician and mixes music. K.Y. stated that they had a good rapport and one day S. was “having a bad day” and slammed the door in K.Y.’s face. K.Y. stated that he felt accused and “attacked” by S. K.Y. also claimed that S. and R. slam the door

upwards to 15 times a day. K.Y. stated that he started asking for help from J.W. in terms of the base pounding through the door from R. and S.'s music and the door slamming and J.W. refused to help him.

K.Y. stated that he works night shifts as he delivers newspapers six days a week. He stated that he leaves at 1:30 a.m. and comes home at 5:00 a.m. and he goes to sleep at 8:30 or 9:00 a.m. and sleeps four to six hours a day waking at 2:00 p.m. and 3:00 p.m. He described himself as an insomniac.

K.Y. stated that he gets along with every other tenant in the building, including people who have lived there for 20 years.

In reply to the Tenant's submissions, M.R. testified that B.P. has a mental disability. She stated that in the past he did "fly off the handle" but that she has not had any issues with B.P. since the incident with K.Y.

M.R. stated that they have not received any other complaints about R. and S. with respect to noise issues, either the base or the alleged slamming of the doors. She confirmed she also did not receive complaints about J.M. when she lived next door. She stated that only one in the rental building who complains about R. and S., or J.M. is K.Y.

M.R. stated that K.Y. has a "hot temper". She stated that when they first started managing the building they had a "meet and greet" in November of 2013. She stated that when she spoke with K.Y. at the meet and greet, he "went off on them" and started yelling at her, her assistant and the building manager; she stated that he told them that they would have to come to his apartment to collect his rent and told them what they could and could not do with respect to the *Residential Tenancy Act*. She stated that she found his communication to be very conflictual.

M.R. stated that K.Y.'s response that he is not in conflict with others is simply incorrect.

M.R. stated that K.Y.'s complaints seem to be during the day, during normal daylight hours, when he is trying to sleep. She also stated that other tenants have complained about K.Y. but do not want to escalate matters by being involved. For instance, M.R. stated that K.Y. has also complained about the neighbour upstairs because she was having a shower and the water was running.

M.R. stated that R. and S. aren't moving out at this time, but are awaiting the outcome of this hearing and confirmed that they will move out if the Tenants are permitted to stay. She said that they do not want to deal with the stress in their unit as they are not able to live a normal life because they can't make any noise in their unit without retaliation from K.Y..

Analysis

Based on the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

The evidence presented supports a finding that there has been a pattern of the Tenant K.Y., interfering and unreasonably disturbing other tenants and the Landlord as alleged in the Notice. K.Y. was warned as early as 2014 that his interactions with other occupants of the rental building were inappropriate. K.Y. has received multiple warnings since 2014 and the behaviour is alleged to have continued since the Notice was issued.

I also find the Tenant's response to the allegations to be unreasonable, in that he submitted that he was only responding "in kind" to aggressive communication and stated that he felt "attacked" by everyone with whom he had dealings. Even if it were true that he was yelled at by others, or spoken to in vulgar terms, this does not justify a response of yelling and using vulgar language; K.Y. seems to believe this is justifiable behaviour, as well as banging on walls when he is bothered by sound. Further, this is entirely contrary to his initial response that it was simply not possible that he was in conflict with others.

I accept the Landlord's evidence that K.Y.'s behaviour has been so disturbing and interfering that other renters in the rental building feel that they cannot reasonably enjoy their units, and are in fear of being yelled at by K.Y. I also accept the Landlord's evidence that others have threatened to move out as they simply cannot deal with K.Y.'s behaviour, which they find harassing.

On this basis I find the Landlord has proven the grounds of the Notice, namely that the Tenants have significantly interfered with and unreasonable disturbed other occupants and the Landlord.

I therefore grant the Landlord an Order of Possession effective two (2) days after service. This Order must be served on the Tenants and may be filed and enforce in the B.C. Supreme Court.

Conclusion

The Tenants' Application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession effective two (2) days after service.

The Tenants' request for recovery of the filing fee is dismissed as they have been unsuccessful with their application.

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: August 23, 2017

Residential Tenancy Branch