



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PR LOTUS HOTEL LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On June 29, 2017, the Tenant submitted an Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause dated June 22, 2017.

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the Landlord have cause to end the tenancy?
- Should the 1 Month Notice be cancelled?

Background and Evidence

Both parties testified that the tenancy commenced on September 1, 2006, as a month to month tenancy. Rent in the amount of \$510.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$215.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that there has been an issue concerning the Tenant making loud noises for the past 12 months. The Landlord testified that the noise from the Tenant is affecting other occupants and the Landlord has received complaints from other occupants of the rental

property. The Landlord testified that some of these occupants have moved out of the rental property due to the noise.

The Landlord provided digital audio/video files containing recordings of the noise coming from the Tenant.

The Landlord provided a copy of a letter dated May 8, 2017, from another occupant of the property that indicates there were strange noises of coughing and intermittent pounding or knocking on the ceiling on May 6th and May 8th. The letter indicates the noise sounded like cheering/ screaming and slapping of skin and cursing. The letter identifies the noises as coming from the Tenant's unit. The Letter indicates that a complaint was sent to the manager at 12:13 am about the noise.

The Landlord provided a copy of a complaint letter dated May 26, 2017, from the same occupant who previously complained. The letter indicates that the occupant was disturbed by the Tenant from 12:53 am to beyond 3:00 am. The letter indicates that the occupant knocked on the Tenant's door and told him to stop making noise.

The Landlord provided a copy of an email dated June 22, 2017, regarding further complaints about the Tenant.

The Landlord testified that verbal and written warnings were issued to the Tenant about the noise. The Landlord provided copy of a warning letter dated May 9, 2017, which was issued to the Tenant. The letter indicates the Landlord has received numerous complaints of noise from the Tenant's unit.

The Landlord testified that the noise from the Tenant did not improve so the Landlord issued a 1 Month Notice to End Tenancy For Cause on June 22, 2017.

The Landlord selected the following reason for ending the tenancy in the 1 Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*

The Landlord provided a copy of a letter dated June 23, 2017 from a different occupant complaining that the Tenant has been making loud vocal noises of grunts, groans and yelps. The complainant indicates that the noise makes it impossible to sleep during the outbreaks.

The Landlord provided a copy of another warning letter dated July 28, 2017, that was issued to the Tenant after the 1 Month Notice To End Tenancy For Cause was issued.

The Landlord provided copies of police reports to show that the police were called due to noise complaints.

The Landlord testified that the noise from the Tenant occurs during the day and the night. He testified that the rental unit contains small single room units. The Landlord testified that the coughing noise has continued into late July and early September.

In response, the Tenant's advocate submitted that the Tenant's health concerns began in 2006.

The Tenant testified that he has poor mobility and cannot walk well. He testified he has poor breathing and is taking medications for a heart condition. He testified that he has severe COPD that affects his breathing while lying down. He testified that it causes coughing and wakes him up and has to catch his breath.

The Tenant testified that after receiving complaints he saw his doctor who prescribing different medications and is increasing others. He submitted that he is going for further tests for his heart condition in late September.

The Tenant provided a copy of a letter dated July 11, 2017 from his Doctor who states that the Tenant's coughing is caused by chronic medical conditions that the Tenant cannot control or mitigate apart from using medications.

The Tenant testified that he has elevated his bed and uses more pillows to help with the coughing. He testified that it has been two months since he has had an attack and he is not waking up at night any longer.

The Tenant testified that the Landlord has spoken to him about noise on a number of occasions and its mainly one person who is complaining.

The Tenant testified that the Landlord has offered him compensation if he will move out.

The Tenant's advocate submitted that there was a month between noise incidents that was caused by the Tenant's medication. She submitted that this eviction stems from a three day period in May and one day in June.

The Tenant's advocate submitted that the occupant's complaints are hateful and are based on the Tenant's social status.

Analysis

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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 the matter before me, the Landlord has the onus to prove that the reasons to end the tenancy are valid. Based on the evidence and testimony before me, I make the following findings:

I have reviewed the video files that contain audio recordings of the Tenant. I find that the recordings from outside the Tenant's door show that the Tenant was coughing and making other moaning type noises. I find that the volume of noise from the Tenant's coughing and moaning was loud enough to hear clearly in the hallway.

Based on the evidence before me, I accept the Landlord's testimony and evidence that the Tenant's coughing disturbed the other occupants of the rental property.

I have considered whether the interference or disturbances to other occupants of the rental property was significant or unreasonable. I accept the Tenant's testimony and medical evidence that he suffers from a heart condition and severe COPD that affects his breathing and causes coughing that he cannot control or mitigate apart from using medications. I do not find that the Tenant was making noise intentionally to bother other occupants or the Landlord. I find that the coughing noise is due to the Tenant's medical conditions.

I am mindful that the Tenant has lived in the rental unit for 11 years. There was no testimony or documentary evidence from the Landlord regarding any previous incidents of disturbances by the Tenant. I find that the disturbances of the coughing noise were not unreasonable because they resulted in a handful of complaints and are due to a medical condition of the Tenant.

I accept the evidence that the Tenant is under a Doctor's care for his conditions and the Tenant indicates his coughing has improved. I find that it is reasonable for occupants living in apartment units or single room occupancies to accept that they may hear noise on occasion from other occupants, including situations where they will experience temporary discomfort or inconvenience.

With respect to the other reason for ending the tenancy; that the Tenant seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, I find that there is insufficient evidence from the Landlord to support this reason.

I find that the Landlord has not provided sufficient evidence to support ending the tenancy; therefore, I set aside the 1 Month Notice to End Tenancy for Cause, dated June 22, 2017.

I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated June 22, 2017, is set aside.

The tenancy will continue until ended in accordance with the Act.

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: September 18, 2017

Residential Tenancy Branch