



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*.

Both the tenant and the landlord appeared at the hearing. Both parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The landlord said that he handed his 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) to the tenant in person on July 31, 2017. Pursuant to section 88 of the *Act* the tenant is found to have been served with this Notice to End Tenancy.

On August 20, 2017 the landlord was handed the tenant’s application for dispute resolution. Pursuant to section 89 of the *Act* the landlord is found to have been served with the landlord’s notice of hearing.

Issue(s) to be Decided

Can the tenant cancel the landlord’s notice to end tenancy?

Background and Evidence

Testimony was provided at the hearing by both parties that this tenancy began on around January 1, 2015. Rent is \$450.00 per month, and no security deposit was collected at the outset of the tenancy.

The landlord explained that he had issued a Notice to End Tenancy after several instances involving loud noise and disruption on the property by the tenant. The landlord said that he served the tenant with a Notice to End Tenancy for the following reasons:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

During the hearing, the landlord stated that he has had a long history of issues with the tenant, and that these issues became particularly acute in July 2017. Specifically, the landlord referenced loud music that was played on July 4, 5, 14, 16, 17, 23, 24, 25, 27 and 30, 2017. The landlord noted that this music was played well after 11:00 P.M. and that he had spoken to the tenant on two occasions, on July 4th and 14th, 2017 regarding his concerns with the loud volume of the music.

The tenant did not deny that he had played music at this hour, but explained that he had always complied with the landlord's request to lower the music, and attributed the disturbances to the fact that he had his door and window open in the summer due to the heat.

In addition to issues with loud music, the landlord testified that the tenant had thrown garbage on the driveway on July 24, 2017 and had tossed a lit cigarette on the ground during the fire ban on July 18, 2017. The tenant acknowledged that there had been an issue with garbage but attributed this to a taxi driver and explained that the landlord had over-exaggerated the fire danger associated with a cigarette.

The final aspect of landlord's Notice to End Tenancy concerns an incident where the tenant allegedly turned the power and breaker off to the main house, thereby causing the well-pump to shut down. The landlord said he was without water for 1 week because of sediment that had been churned up as a result of having to restart the well-pump. The tenant denied interfering with the landlord's power grid and well-pump, saying that he did not know how either the grid or the well operated.

As part of his evidentiary package, the landlord produced a written submission detailing the issues that the loud music has created for his family, along with a timeline of incidents that occurred following the issuance of the 1 Month Notice. The tenant explained that he had been suffering from some mental health issues due to the loss of a friend and that recently his behaviour had been affected as a result of this loss.

Analysis

Section 47(1) of the *Act* establishes that a landlord may end a tenancy by giving notice to end the 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.

The landlord stated that he had numerous issues with the noise from the rental unit. Specifically, the landlord said that the tenant had played music very loud after 11:00 PM on July 4, 5, 14, 16, 17, 23, 24, 25, 27 and 30, 2017. The tenant did not deny that he had played his music at a loud volume but explained that he had received two verbal warnings but no written warnings from the landlord regarding the music, and had always complied when the landlord asked him to lower the volume.

Policy Guideline 6 of the *Residential Tenancy Policy Guideline* discusses the Entitlement to Quiet Enjoyment. Here it is noted, “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 for a basis for a claim of a breach of the entitlement to quiet enjoyment.”

After considering the testimony of both parties and reviewing the evidence submitted to the hearing, I find that the landlord has suffered a significant interference by the tenant. At the hearing, the landlord was able to accurately describe exact dates that he had suffered a significant and unreasonable disturbance. Furthermore, the tenant acknowledged that the landlord had spoken to him on two separate occasions regarding concerns that he had with the noise. While there may be mitigating factors present in the tenant’s life that are causing him great distress, these events do not mitigate the fact that he played music at an unreasonable level throughout July 2017.

The tenant’s application to dismiss the landlord’s 1 Month Notice is dismissed.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: November 3, 2017

Residential Tenancy Branch