



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNLC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute wherein the Tenants sought to cancel a Notice to End Tenancy for Cause issued on August 31, 2017 as well as recovery of the filing fee.

The hearing was conducted by teleconference on November 30, 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.

At the outset of the hearing, the Tenants confirmed that they did not receive any documentary evidence from the Landlords in support of the Notice. The Landlord, B.A., confirmed that he did not provide this evidence to the Tenants.

One of the principles of natural justice is that a party to a dispute has the right to know the claims made against them, the opportunity to review any documentary evidence which is submitted by the claimant, and an opportunity to respond to the claims. In failing to provide the Tenants with copies of the documentary evidence, the Tenants were denied a fair opportunity to respond to this information. Further, the *Residential Tenancy Branch Rules of Procedure* provide that the parties must exchange evidence according to strict timelines. As the Landlords' evidence was not served in accordance with the *Rules*, it is not admissible and was not considered in making this my Decision.

No other issues with respect to service or delivery of documents or evidence were raised by either party.

Not all details of the respective submissions and or arguments are reproduced here; further, only the admissible evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Landlord, B.A., confirmed that the tenancy began May 1, 2014.

He testified that he issued a Notice to End Tenancy to the Tenants on August 31, 2017 as a result of numerous complaints he received from other residents of the rental building.

He stated that another renter, E.T., who lives above the subject rental unit, reported that she had been wakened by raised voices and arguing in the rental unit on more than one occasion.

He also stated that he also had numerous complaints from the renter in the next door unit, S.M., (who he called as a witness at this hearing) and her partner, G.D. The nature of her complaints relate to the Tenants arguing and yelling between themselves, as well as aggressive language and behaviour towards S.M. and G.D.

The Landlord stated that he also received several emails from S.M. and G.D., indicating that they were constantly disturbed and harassed by the Tenants. He reported that S.M. and G.D. have called the police on three separate occasions due to aggressive behaviour from the Tenants.

B.A. said that initially he did not get involved because he felt it was a personal issue between the Tenants and S.M. and G.D., but as it escalated he felt he had to take steps to address it. He stated that the Tenants continued to yell and scream at each other, but also at S.M. and G.D. as well as making racist comments towards G.D. B.A. confirmed that as a result he sent two warnings letters to the Tenants regarding the noise from their suite.

He confirmed that the Tenants were issued a warning letter on January 5, 2017 advising them that they were in breach of their tenancy agreement. He read from the letter as follows:

“we have received complaints about louse noise, screaming and fighting coming from your unit on number of occasions. Some of these instances have been in the middle of the night and have woken up other tenants.”

He stated that in this letter the Tenants were reminded of their obligation to follow the tenancy agreement and in particular section 17 which relates to conduct and which provides that Tenants must not “disturb, harass or another occupant”.

He confirmed that the Tenants were sent a second warning letter August 21, 2017 which he characterized this as a final warning. Again he read from the letter which included the following:

“we have received recent evidence of yelling screaming and racist rants coming from your unit”

B.A. stated that he was provided a recording of one of the Tenants swearing at S.M. and G.D., calling them racist and homophobic names and threatening to harm them.

B.A. further stated that in addition to complaints from E.T., the renter above the subject rental unit, and S.M. and G.D., he has also received complaints from A.Q., the renter next to the subject rental unit. He stated that A.Q. informed him that the Tenants were always fighting, screaming and yelling at each other.

B.A. confirmed that despite issuing the warnings, the Tenants behaviour has continued as the most recent incident occurred when B.A. was on vacation on October 19, 2017.

The Landlord's witness, S.M., also testified.

She confirmed that she has lived in the rental unit next to the subject rental unit since September 2016. She stated that she has had difficulty with the Tenants since the first day she moved as the Tenant, A.G., told her that he wanted her to keep the blinds down in her living room. She stated that their balcony is situated such that they can see the Tenants' balcony and the Tenants can see into their living room.

S.M. stated that she did as he asked at first, but realized that wasn't reasonable because they wanted to have morning light. She stated that she lifted them and A.G. came over and aggressively demanded that they put their blinds down.

S.M. stated that it got worse and in late November of 2016 the Tenants began yelling at S.M. She stated that the Tenant, A.K., came out on the balcony and said “we love Trump and those “n---r d--s” are going to have to move. S.M. stated that her partner, G.D. has darker skin and she assumed A.K.'s comments were in reference to G.D.

S.M. confirmed that she called the police as a result of this incident. She stated that an officer attended and took their statements, and spoke to the Tenants. She stated that the police officer suggested to S.M. that they put up a plastic covering on the window to reduce the potential for conflict, which S.M. did and advised it was still there.

S.M. stated that she does not know the Tenants and does not know why they have issues with them, or why they act as they do.

She confirmed that for three or four months after the November 2016 incident the Tenants seemed to be okay, however a further incident occurred in April of 2017. She informed that she is an English instructor at a college and as a result of the semester ending she was home more frequently in April of 2017; she said it seems the Tenants get more agitated when she is at

home although she does not understand why. She reported that at this time, the Tenant, A.K., came out on the balcony, swore at her and insulted her sexuality. S.M. stated that she called the police again and the officer, D.B., came and gave the Tenants a second warning.

S.M. confirmed that she informed the Landlords of the November 2016 and April 2017 incidents.

S.M. stated that the conflict escalated again in August 25, 2017 when she says the Tenant, A.K., came out on their balcony and made threats against S.M. and her partner; she testified that he swore at them, called them homophobic names, told them they don't work and needed to get a life, and informed them they were being "watched" and threatened that he would "wait for them across the street". S.M. testified that she spoke to, A.Q., the neighbour next to the Tenants who confirmed they heard these threats as well.

S.M. stated that they phoned the police again and again, constable, D.B., arrived and warned the Tenants again. She stated that A.Q. also spoke to the police. S.M. stated that following this incident she was informed that an eviction notice was given.

S.M. stated that it has been a very difficult year and it has been extremely upsetting dealing with the Tenants. She stated that she does not know why the Tenants have chosen to do this. She said they don't sound like very happy people, and she hopes that they can find happiness somehow. S.M. confirmed that she is afraid of the Tenants and confirmed that her partner is very upset and hurt by the comments.

The Tenant A.K. cross examined S.M. and asked her if she shouted to her on October 22, 2017 about her "mother". S.M. confirmed that she has heard A.K. speak of her mother dying and S.M. said that her mother would be really concerned about her behaviour.

The Tenant then A.K. asked if S.M. made posts about A.K. and A.G. being Trump supporters on social media and S.M. confirmed that she did. S.M. stated that she was angry towards the A.K. and A.G. and their comments about their sexuality when she made the posts.

The Tenant A.K. responded to the Landlord's allegations as follows.

A.K. denied that she has made racist or homophobic comments against the neighbours. She also stated that A.G. has not made racist or homophobic comments against their neighbours.

A.K. confirmed that the police attended on March 30, 2017 for the second time, but stated that she believes that if A.K. threatened to shoot her he would have been arrested.

A.K. confirmed that the police attended their residence on December 16, 2016, March 30, 2017, and October 19, 2017.

A.K. stated that to her knowledge there have never been any complaints about them from the upstairs neighbour (E.T.) or the other neighbour (A.Q.).

A.K. confirmed that she received a warning letter on January 5, 2017 regarding excess noise from the rental unit. She testified that on the date in question she was very upset with a family member from "back east" and was upset for a "few days". She stated that she was on the phone using a loud voice and was not arguing with A.G. She confirmed that she did not speak to the Landlord about this warning letter. The Tenant stated that she also did not speak to the Landlord about the August 21, 2017 warning letter claiming that she was advised not to by a lawyer.

In terms of the conflict with S.M., the Tenant stated that when they first met, her partner A.G., nicely asked them to close their blinds and at that time the neighbours threatened to call the police. She said that she feels that S.M. has been "gunning to have them evicted" and that this is all "just about a window." She also stated that they have had no prior issues with the other neighbours. A.K. also testified that S.M., took a photo of another neighbour's balcony and posted it to a social media site such that she believed that this was an indication that S.M. has no respect for people's privacy. She also stated that S.M. was "blasting Hilary Clinton speeches" in November of 2016 and was very upset when Trump won the 2016 election.

A.K. also stated that she spoke to the police on March 30, 2017 and the police saw this as a dispute between neighbours not warranting any action. She questioned that whether there really was a recording of her or A.G. threatening their neighbours, as if it existed why hasn't it been provided to the police?

A.K. stated that she believes the Landlord wants to evict them so they can raise the rent.

A.K. stated that she has not been able to speak to the Landlord's agent, B.A. as he puts do not disturb signs on his door and doesn't deal with any issues.

In reply to the Tenants' submissions, B.A., stated that when the window issue was first brought to his attention he spoke to the Tenants at length.

He also stated that the problem is not just the Tenants interactions with S.M. and her partner rather, the issue is because the Tenants fight constantly, and disturb others. B.A. stated that while at the rental building he has personally heard the Tenants fighting amongst themselves and the disturbance their arguing and yelling causes. He stated that this is not about S.M. or other occupants of the rental building, it is about A.K and A.G.'s personal problems and excessive fighting.

B.A. reiterated that he has spoken to other renters who confirm that they hear the screaming and yelling "all the time." He stated that he received complaints from three other renters, not just S.M., and he had to do something because it was happening constantly.

B.A. also said he spoke to the property manager who instructed him to send a final warning. He concluded by saying that he is sorry that he had to issue the 1 Month Notice, but he felt like he had no choice as they were disturbing so many people and although he kept hoping that the situation would improve but it didn't.

Analysis

After careful consideration of the admissible evidence before me, the testimony of the parties, and the testimony of the Landlords' witness, S.M., I find that the Tenants' application to cancel the Notice should be dismissed. I find the Landlords have met the burden of proving that the Tenants have significantly interfered with or unreasonably disturbed another occupant, as well as seriously jeopardized the safety of another occupant. My reasons follow.

I accept the testimony of A.B. that he has received numerous complaints about the Tenants yelling screaming and arguing in the rental unit to such an extent that they are unreasonably disturbing others. I further accept his testimony that he has personally heard the Tenants yelling and fighting while at the rental building. I find that he has attempted to address these concerns by speaking with the Tenants directly, as well as issuing warning letters, yet the Tenants behaviour continues. I do not accept the Tenant, A.K.'s testimony that she was unaware others have had issues with the noise caused by her and A.G., or that the only issue was a telephone discussion she had with a family member "out east". Where her testimony diverges with the Landlord B.A., I prefer B.A.'s as I found him to be forthright and sincere in his testimony, whereas I found the Tenant to be combative and evasive in her testimony.

I also accept S.M.'s testimony that she and her partner G.D. have been subjected to racist and homophobic verbal assaults by the Tenants. I also accept her testimony that she is afraid of the Tenants and has called the police on numerous occasions as a result of the Tenants' aggressive behaviour. While the issue may have originated due to a "window" and the relative lack of privacy between the Tenants' balcony and S.M.'s living room window, I find that the Tenants have escalated the matter to a point that they are harassing and intimidating S.M. and G.D.

In all the circumstances I find the Landlord has proven the reasons for issuing the Notice and I dismiss the Tenants' Application in its entirety.

Conclusion

The Tenants' application to cancel the Notice is dismissed. The tenancy shall end in accordance with the Notice. As the effective date of the Notice, September 30, 2017, has already passed, and pursuant to section 55 of the *Residential Tenancy Act*, I grant the Landlords an Order of Possession effective two (2) days after service on the Tenants. If the

Tenants do not vacate the rental unit as Ordered, the Order may be filed and enforced in the B.C. Supreme Court.

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: December 8, 2017

Residential Tenancy Branch