



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution, filed October 12, 2017, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on September 30, 2017 (the "Notice").

The hearing was conducted by teleconference on December 20, 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 and 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 *Residential Tenancy Branch 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.

The *Rules* also provide that when a Tenant applies to cancel a notice to end tenancy, the Landlord must present their case first as the onus is on the Landlord to prove the reasons for ending the tenancy.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Counsel for the Landlord stated that the tenancy began April 2015. The Tenant rents a rental unit in a four-plex of an older house which has been converted to separate suites; there are three other units occupied by four other renters. Counsel confirmed that

although monthly rent is \$850.00 per month, the Tenant pays \$800.00 as he is credited \$50.00 per month for work he does to the rental unit.

The Reasons cited on the Notice are noted as follows: “the Tenant, or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.”

Counsel submitted that the Notice was served because the Tenant and his guests regularly disturb the other occupants of the four-plex. He stated that the other four renters regularly complain of excessive noise, arguing, loud music and partying late in the evening and early into the morning from the subject rental unit. He further stated that this has been an ongoing and regular issue; however, the following dates are identified as being the most significant.

On May 2017 the Tenant and his girlfriend were drinking and partying all day and his girlfriend fell off the roof. The ambulance was called to attend to her. Introduced in evidence were text messages from two other renters wherein they inform the Landlord of this event. Also introduced in evidence was a letter from the tenant, B.S., who described the incident and the tremendous impact on his pre-existing anxiety. B.S. writes how for a period of time the Tenant's girlfriend was not breathing and he administered C.P.R. until she regained consciousness.

On July 26, 2017, the Tenant and his girlfriend were again drinking and partying. Their activities culminated in fighting, yelling and crying in the early morning hours. The Landlord's spouse, L.H., served a hand written warning letter on the Tenant wherein he was advised that two other occupants made complaints and that his tenancy was in jeopardy. A copy of that handwritten letter and the transcription was provided in evidence.

On July 31, 2017 an unsigned 1 Month Notice to End Tenancy for Cause was given to the Tenant. Counsel submitted that after several promises by the Tenant of improved behaviour the Landlord did not proceed with the eviction.

August 20, 2017 the Tenant and his girlfriend had another “screaming fight” culminating in them leaving the rental building and slamming doors. Documentary evidence supplied by the Landlord confirms that this incident was reported to the Landlord by other occupants of the rental building.

On September 23, 2017 the other occupants complained again of the Tenant and his guests up until 3:00 a.m. with loud music. Following this incident, and on September 30, 2017 the Landlord issued the Notice.

After receiving the Notice, and on October 20, 2017 the Tenant and his guests were again up late, yelling and fighting with loud music playing. At this time the other occupants complained that the Tenant and his guests were also smoking in the rental unit.

On October 24, 2017 the occupant, N.B., provided the Landlord with a two page letter wherein she wrote of the impact of the Tenant's behaviour as well as how she felt the Tenant was pounding on her doors as a means to intimidate her.

Documentary evidence provided by the Landlord confirms that on November 14, 2017, the Landlord offered the Tenant \$5,000.00 to assist him in moving from the rental unit.

On November 18, 2017 the Landlord was again informed that the Tenant and his guests were up late partying with loud music, foul language and what sounded like broken glass. At this time, the occupant on the main floor called the police.

During an appraisal on November 21, 2017 the rental unit was observed to smell heavily of smoke. An ashtray was also observed by the Tenant's computer. The Landlord also observed the Tenant has disabled the smoke detector.

Counsel for the Landlord further submitted that on November 22, 2017, while the Landlord, a realtor and an electrical inspector attended the rental building, they could smell smoke coming from the rental unit.

Counsel for the Landlord confirmed that there is no smoking within the rental building. Introduced in evidence was a copy of a "Letter of Understanding" addressed to all renters and which confirmed the non-smoking policy. Counsel submitted that the other occupants have complained of the smoke wafting into their rental units as well as in the common areas.

On November 24, 2017 the realtor and another house appraiser attend the rental unit and again smell cigarette smoke. The smoke detector was still disengaged.

Counsel for the Landlord submitted that the Landlord advised the Tenant on numerous occasions that his tenancy was in jeopardy.

In reply to the Landlords' submissions, the Tenant responded as follows.

The Tenant stated that he is not making noise as alleged, and that in fact he has been harassed by the other occupants of the rental building. He claimed that the other occupants have a personal vendetta against him and want him evicted.

In response to the Landlord's submissions regarding the May 27, 2017 incident the Tenant confirmed that his girlfriend fell from the roof, but claimed it was an accident. He stated that she had "a couple shots of liquor" (which he says she usually handles) but had a poor interaction with her prescription medication causing her to fall off the roof.

In response to the Landlord's submissions regarding the July 26, 2017 incident the Tenant stated that he was simply talking with his girlfriend and they were not having an argument.

In response to the Landlord's submissions regarding the August 21, 2017 incident the Tenant stated that he and his friend were again simply "having a conversation". He stated that he doesn't have a sound system, and is not a "gang banger" as alleged by the other occupants. He also stated that he works during the day and wasn't up all night on that occasion, or on others as he has to get up early.

The Tenant stated that he received a warning from the Landlord in July and then immediately received the July 1 Month Notice to End tenancy. He noted that the July notice was not signed.

The Tenant further stated that all of these complaints are largely fabricated to get rid of him. He stated that the banging on the walls is not him, but the neighbour, N.B. He stated that the neighbours pass judgment on him because he grew up in group homes.

In response to the Landlord's submission regarding the August 21, 2017 incident, he stated that his girlfriend slammed the door. He stated that they had an argument at 8:00 p.m. and they left the premises immediately as he is "paranoid" about disturbing anyone else in the building. He further stated that he did not know that the police were called.

In response to the September 23, 2017 incident, the Tenant denied making any noise in his rental unit.

In response to the Landlord's allegation that the Tenant smokes in the rental building, the Tenant stated that he smokes on his balcony, not in the rental unit. He confirmed that he saw the picture of the ashtray beside his computer which was submitted by the Landlord and in response claimed that he didn't know when that photo was taken, that "for all [he] knows the Landlord may have planted it there", and that the picture was likely taken without his permission. He testified that he takes his cigarette butts from outside and rolls new cigarettes at his desk. He then stated that he "has no recollection of the events" and in any case does not smoke inside.

The Tenant further stated that the statements which were given by the other occupants are "preposterous and baffling".

In written submissions provided by the Tenant he confirmed that he was aware the rental unit was "tight quarters" and that sound proofing was an issue for previous tenants. The Tenant also wrote that he had a good relationship with the Landlord, whom he considered a friend and "mentor" and who helped him through a difficult personal time. Copies of text communication between the Tenant and the Landlord confirm that the Tenant was very fond of the Landlord, and at as recently as October 2017 wrote that he loved the Landlord.

In the written submissions, the Tenant writes that the lack of appropriate soundproofing has contributed to the deterioration in his relationship with other occupants of the rental building as well as the Landlord. He alleges that other occupants make just as much noise, have insulted him, and engage in marijuana smoking.

The Tenant further writes that his relationship with the Landlord further deteriorated after he alleges the Landlord verbally assaulted his guest, B.F., on October 23, 2017. He writes that he confronted the Landlord about this incident during which time the Landlord gave an unsatisfactory apology, and the Landlord's spouse, L., sat beside the Landlord with "the most peculiar grin on her face – almost like she was enjoying orchestrating the drama of the situation".

The Tenant continues to write of conflict he has had with the Landlord and the realtors as the Landlord prepares and shows the rental building for sale. The Tenant writes that the mental stress caused by the dispute is such that he has had to take time off work.

The evidence indicates the Landlord also issued a 2 Month Notice to End Tenancy for Landlord's Use; the parties agreed that a hearing on the merits of that notice is

scheduled for February of 2018. As the 2 Month Notice was not before me, I shall not reproduce any evidence relating to that issue.

Analysis

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

I find the Landlord has proven the reasons set forth in the 1 Month Notice to End Tenancy for Cause, namely that the Tenant and his guests have unreasonably disturbed other tenants in the rental building; **I therefore dismiss the Tenant's application to cancel the Notice.**

It was clear during the hearing that the Landlord reluctantly issued the Notice to end tenancy. The evidence suggests the Landlord offered the Tenant a significant monetary payment to entice him to move from the rental unit without having to be evicted. I accept the Landlord's evidence that he did so as he genuinely cares for the Tenant.

The evidence indicates that the Landlord gave the Tenant numerous opportunities to correct his behaviour and that the Tenant was informed that his tenancy was in jeopardy. The communication between the parties suggests there was a personal friendship between the Tenant and the Landlord and that for the majority of the tenancy the Tenant regarded the Landlord as a friend and mentor. Unfortunately, their relationship deteriorated as the disruption caused by the Tenant and his guests negatively impacted other occupants of the rental building.

As set out in *Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* a Landlord must not sit idly by while a tenant's right to quiet enjoyment is infringed; similarly, a Landlord may be held responsible for the actions of tenants if they are creating problems for other tenants. In this case, I find the Landlord acted appropriately in issuing the 1 Month Notice, as failing to do so would have negatively impacted the other occupants and made him potentially liable for the Tenant's actions.

The letters and texts from the other occupants submitted in evidence by the Landlord confirm that the conflict between the Tenant and his friend, B.F., has been very disruptive to the other occupants of the rental building. The incident in May of 2017 where the Tenant's friend, B.F., fell from the roof was clearly the most disturbing. I accept that the occupant, B.S., was particularly upset as he resuscitated B.F. and that this incident exacerbated his anxiety. The text communication provided in evidence by

the Tenant confirms the Tenant was aware of the severity of this incident, yet during the hearing he clearly attempted to downplay its significance.

I accept the Landlord's evidence that the other occupants have complained of loud music, arguing and fighting from the Tenant's rental unit and that these incidents have been ongoing and continuing even after the issuance of the Notice.

During the hearing the Tenant claimed the issues were simply a result of poor soundproofing, and a "vendetta" by the other occupants. He denied making unreasonable noise or disturbing others and suggested the blame lay with the other occupants. The Tenant also suggested the Landlord must have planted the ashtray of cigarette butts by his computer. I am not convinced by these excuses.

Where the evidence of the parties conflicts I prefer that of the Landlord over the Tenant. The volume of complaints from other occupants, the police attendances and letters written by the other occupants indicate this tenancy creates an unreasonable disturbance to others and is simply unworkable. I find the Tenant is unwilling, or perhaps unable, to appreciate the impact of his behaviour on others.

For these reasons I find the Landlord has proven the reasons set forth in the 1 Month Notice and that the tenancy shall end in accordance with the Notice.

Conclusion

Having dismissed the Tenant's Application to cancel the Notice **I must, pursuant to section 55 of the *Residential Tenancy Act*, grant an Order of Possession.** At the time of the hearing, the effective date of the Notice, October 31, 2017, had passed; consequently, **the Order of Possession shall be effective two (2) days after service.** 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 29, 2017

Residential Tenancy Branch