



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Itziar Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for the stated reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2014. Rent of \$1,079.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. On March 16, 2018 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door of the unit. The Tenant applied to dispute the Notice on March 18, 2018. The stated reason set out on the Notice is that the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord states that the Tenant shares a balcony with a neighbour with a dividing partition. The Landlord states that the neighbour moved into the building in September 2016. The Landlord states that the neighbour has written complaints primarily about noise from the balcony on September 27, October 25, November 17 and 20, 2017 and on March 15, 2018. The Landlord states that the neighbour's complaint letters provided as evidence for this hearing describe the noise as being from loud parties, loud voices and loud music on each of these occasions for about one hour late in the evening. The Landlord states that the neighbour complained about being woken from the noise.

The Landlord states that the Landlord has done nothing to install any noise barriers on the balcony and that no other neighbour has complained about noise from the Tenant's unit or balcony. The Landlord states that they have only received a few noise complaints about the balconies over the past 8 years. The Landlord states that the building is concrete with concrete between the units and the floors. The Landlord states that they believe the complaints are primarily about the noise off the balcony. The Landlord states that they provided two written warnings to the Tenant including a warning that they would seek an end to the tenancy if the noise continued. The Landlord states that they themselves have not heard any noise from the unit but that the security guard has mentioned some noise. The Landlord provided copies of the two warning letters from the Landlord dated October 5 and 27, 2017. The Landlord states that if the Notice is found valid the Landlord would like to give the Tenant more time to find another unit and seek an order of possession effective July 31, 2018.

The Tenant states that nobody on the same floor as the Tenant has made any complaints and that one tenant who lives directly across the hall from the Tenant has written a letter indicating that the Tenant has not caused any significant or unreasonable disruption. The Tenant states that the neighbour who complained is overly sensitive to noises and embellishes the complaints. The Tenant states that this summer and on about 3 or 4 occasions the neighbour has banged on the wall while the Tenant was

cooking dinner. The Tenant states that on one occasion the neighbour banged so hard pictures fell off the Tenant's wall. The Tenant denies having any parties and states that at the most she has had one or two friends over for less than a half hour. The Tenant states that there has never been any screaming or fighting on the balcony. The Tenant states that if there were noisy parties one could expect complaints from additional neighbours. The Tenant states that her blue tooth speaker has the bass and treble turned off and that the speaker is never on the balcony. The Tenant states that the neighbour is exaggerating and making unreasonable complaints. The Tenant states that the neighbour's expectation of quiet is unreasonable given the location of the unit in a downtown area. The Tenant states that the complaints from the neighbour all were based on week day incidents and that the Tenant has to work weekdays so the Tenant would not be partying or staying up late during the week.

Analysis

Section 47(1)(d) provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, 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. Where a landlord's notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the notice and that at least one reason must constitute sufficient cause for the notice to be valid.

The Landlord's evidence is all indirect evidence. The person who complained about the level of noise did not provide any oral evidence at the hearing. The Tenant's evidence is direct and the Tenant provides a letter from a neighbour indicating that no significant disturbance has occurred. There is no evidence of any other tenants complaining about noise. I accept that as a downtown location noise one could reasonably expect a certain level of noise from outside a unit. There is no evidence that the Landlord took any steps to create a better sound barrier on the balcony and there is no evidence that the neighbour had its windows open or closed on the dates of the noise complaints. It is

unknown whether the windows being open or closed make any difference in the noise volume coming from the outside of the building or from the deck. Given the Tenant's undisputed evidence of the neighbour banging on the walls while the Tenant was merely cooking I consider that the neighbour is unusually reactive and I accept therefore that the neighbour exaggerated or embellished the circumstances with the written complaints. While I accept that the neighbour was disturbed by the instances of noise late in the evening, I consider that the evidence indicates the instances were few and very short lived. I do not consider that the Landlord has substantiated any loud parties. Further given the evidence provided and considering the downtown location and design of the balcony I cannot find that the noise coming from a few voices on a few occasions was either unreasonable or significant. As a result I find on a balance of probabilities that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful I find that the Tenant is entitled to recovery of the filing fee and the Tenant may deduct the \$100.00 from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and the tenancy continues.

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: June 04, 2018

Residential Tenancy Branch