



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated April 8, 2018. The Notice claims that the tenant is permitting an unreasonable number of occupant and that she or a person permitted on the premises has a) significantly interfered with or unreasonably disturbed another occupant, or b) has engaged in illegal activity that has threatened the quiet enjoyment, security or safety of another occupant.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the tenant has given cause for eviction on any of the grounds listed in the Notice?

Background and Evidence

The rental unit is a one bedroom basement suite. The upstairs of the home is rented to a family of four, including two small children.

This tenancy started in early August 2017. The monthly rent is \$799.00. The landlord holds a \$400.00 security deposit and a \$200.00 pet damage deposit.

The landlord testifies that his upstairs tenant, Mr. G.S. has provided him with documentation to establish that the tenant has been disruptive.

That documentation shows that In November 2017 the police were called to the unit to deal with a fight in the basement suite during the early morning hours. The tenant had been assaulted by an acquaintance; a boyfriend or ex-boyfriend. The landlord confronted her after that incident and told her if anything like that happened again he would evict her.

To the landlord's knowledge the next incident occurred in April 2018. According to the upstairs tenant he had arrived home from work at about 4:00 in the morning, went to bed but was awoken at about 4:45 a.m. by two people below, screaming at each other. Then the downstairs people started slamming doors. Then two other people in the basement suite started screaming as well. His family was awakened.

At the landlord's request Mr. G.S. provided him with details of other incidents that had occurred between November 2017 and April 2018 but that had not been previously reported to the landlord. They are composed of a November 3 incident when tenant noise woke him up at 11:40 p.m., a November 21 text to the tenant at 11:23 p.m. to "keep the noise down," a December 16 text at 12:04 a.m. inquiring whether "everything is alright down there," a January 4 at 10:29 p.m. text stating "can you stop screaming please," a February 26 text saying it was "super loud" in the tenant's suite and asking everyone to "keep it down," and a March 6 at 12:47 a.m. text asking the tenant to keep the noise down as it had awakened Mr. G.S.'s baby,

Some of the tenant's replies to the texts acknowledge the noise and apologize or offer explanations.

In response the tenant testifies that there is no soundproofing between the suites, that she speaks loudly but never screams and that her mother, who was at that time an active alcoholic, is deaf and talks loudly. She says she can hear the upstairs tenants talking through her ceiling.

The tenant says the November police incident was caused when her ex-boyfriend, whom she had invited to her suite to talk about their relationship, proceeded to beat her. Her cries for help resulted in someone, likely from upstairs, calling the police.

She says she had received no warning from the landlord about her conduct. She says her mother is now gone from the premises and will be living elsewhere.

Analysis

Unreasonable Number of Occupants

This ground for the Notice fails. The landlord has not provided evidence to establish that there were an unreasonable number of occupants (as opposed to guests) in the rental unit.

Significant Interference or Unreasonable Disturbance

Section 47(1) of the *Residential Tenancy Act* (the “Act”) provides that a landlord may end a tenancy on one month’s Notice where the tenant or a person permitted on the residential property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or (iii) put the landlord's property at significant risk. There is no suggestion here that the landlord’s property was put at significant risk by the tenant’s conduct.

Though the neighbouring tenant Mr. G.S. did not testify and was not subject to questioning about his correspondence with the tenant, I consider the texts that he sent to the tenant contemporaneous with the incidents to be a reasonably reliable indicator of the nature and severity of each incident. The tenant’s concurrent replies were generally acknowledgements not denials of any incident.

The November 3 incident where noise from below woke the baby upstairs, does not define the type of noise. It may well have been normal household noise. I do not consider as a valid ground for the Notice.

The November 18 incident involving the physical attack by the tenant's ex-boyfriend and the attendance of the police was a significant event and was an unreasonable disturbance of the upstairs tenants and their family. Had the ex-boyfriend not been permitted on the property by the tenant then the disturbance caused by the assault would not be her responsibility. However, she agrees that he came onto the property with her permission and at her invitation, in order to talk about working things out. Whether his violence was on her, on someone else in the suite or merely on property in the rental unit, she is responsible for the disturbance caused as a result.

The November 21 incident; the text asking the tenant to “keep it down,” does not describe the type or level of noise. It may have been household noise. It has not been

shown to have been an unreasonable disturbance or a significant interference with the upstairs tenants.

The December 16 incident would appear to be repeated telephone ringing from the tenant's suite. That is a household noise and it has not been shown to have been an unreasonable disturbance or a significant interference with the upstairs tenants.

The January 4 incident at 10:29 p.m. was a report of screaming from the tenant's rental unit. By her text response she confirmed it occurred but said it was a guest. I find that this incident created an unreasonable disturbance to the upstairs tenants.

The February 6 incident at 10:26 p.m. appears to be the upstairs tenant complaining about loud talking. That is a household noise and it has not been shown to have been an unreasonable disturbance or a significant interference with the upstairs tenants.

The March 6 incident at 12:47 a.m. appears to be loud talking very late at night. In this case, the noise was significant enough to wake a child upstairs. I find it to be an unreasonable disturbance.

The April 6 incident occurred at about 4:45 a.m. A total of four people were screaming from the lower rental unit and doors were being slammed. The family upstairs was woken up by it. I find it to have been an unreasonable disturbance that significantly interfered with the tenants upstairs.

Living in close quarters as the tenants in this house were requires some adjustment. It is not always apparent what can or cannot be heard in the adjoining rental unit. In this case the tenant had repeated notifications about what noise or conduct created a disturbance for the family upstairs. Nevertheless, she continued the conduct or continued to permit people into her rental unit who would create disturbances late at night or in the early morning hours.

I find that the tenant has significantly interfered with and unreasonably disturbed Mr. G.S. and his family living upstairs. There is no requirement that the landlord give a prior warning about tenant conduct. For this reason I find that the Notice was a proper Notice and I dismiss the tenant's application to cancel it.

Illegal Activity

In light of the finding above there is no need to make a determination about whether the tenant's ex-boyfriend's assault was an illegal activity within the meaning of s. 47(1)(e) of the *Act*.

Conclusion

The Notice is upheld. The tenant's application is dismissed. Pursuant to s. 55 of the *Act*, the landlord will have an order of possession effective June 30, 2018.

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 12, 2018

Residential Tenancy Branch