Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC ERP MNDCT FFT

Introduction

Both parties and witnesses attended the hearing and gave sworn testimony. The evidence is that a One Month Notice to End Tenancy for cause dated May 9, 2018 to be effective June 30, 2018 was served by personally on the tenant. The tenant had filed an Application dated May 3, 2018 claiming compensation for certain problems. She filed an Amendment May 16, 2018 to also dispute the Notice to End Tenancy. The landlord confirmed he received the Application and amendment by registered I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) To cancel a notice to end tenancy for cause pursuant to section 47;
b) To compensate the tenant in the amount of $10,000 for ignoring the persistent disturbance of their peaceful enjoyment contrary to section 28 of the Act and for withdrawal of necessary facilities (lawn mowing) contrary to section 27 of the Act.; and;
c) To order the landlord to comply with the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to relief? Has the tenant proved on the balance of probabilities that the landlord has failed to protect their peaceful enjoyment and to maintain the property? If so, to how much compensation are they entitled?

Background and Evidence

Both parties and witnesses who attended the hearing were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in November 2011, it is now a month to month tenancy, rent is $1224 a month and a security deposit of $550 was paid. The landlord served a Notice to End Tenancy for the following reasons:

a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord explains in the Details box on the Notice: The tenant continues to make unfounded accusations against another tenant and the landlord. The tenant is harassing the landlord and using up resources and time of caretakers on false accusations.

The landlord provided a number of letters in evidence plus the testimony of the manager and him. The tenant lives in Unit 3 and she made 3 formal complaints regarding Unit 2 which has an adjoining wall on March 15, April 12 and April 17, 2018 about noise between 1:15 p.m. and 7:15 p.m. The manager responded by visiting unit 2 and found nothing unusual; on the first date, the teenager were playing music while their parents were not home and they turned it down immediately, the second and third times, the manager heard no loud music and found them watching TV. The manager asked Unit 1 if they were hearing loud music and they said 'No'. Three other nearby units (units 1, 5 and 6) signed letters to say Unit 2 does not play loud music or conduct their lives in a loud, excessive way. Unit 1 states by email that the conflict between this tenant and Unit 2 is getting tiresome. A previous tenant of Unit 1 states the music and noise from Unit 2 is reasonable. A letter dated November 2016 from the previous manager states she objects to the illegal audiotaping done of conversations by this tenant and accuses the tenant of going to her door and trying to provoke her.

A letter from Unit 2 states they have had serious issues with this tenant since moving in February 2016. Her son who is autistic has been the subject of many complaints to the Police concerning his intrusive behaviour which included trying to enter their unit from their porch roof when they had to restrain him physically. They state that after these issues, the tenant started making complaints about 'noise' from their unit and they have had visits from three managers over the past two years who have come to their door and heard nothing. The letter states the parents from Unit 3 park their car in front of their unit's sidewalk making it difficult to get out and play music and honk the horn multiple times. The son calls him names. The tenant has gone to his daughter's school and demanded his daughter be removed; she stands at her door and watches him for hours and listens to his conversations with friends. Once when the Police attended, the tenant was on the top of her toilet listening through the open bathroom window next to

their steps. The Police recommended he lay harassment charges. Unit 2 did lay harassment charges (police file # given) against this tenant and asks the landlord for some relief.

The landlord said there had been a previous hearing over a year ago where many of these issues were discussed and the tenant was cautioned to stop making unfounded allegations.

The tenant's advocate said that the tenant found there was reasonable quietness for the nine months after the previous hearing in January 2017 but then it started up again. She said the tenant only made recordings of conversations without authority because she was trying to obtain proof of the behaviour of the tenant in unit 2. The tenant alleged she had questioned Unit 5 about the letter of complaint and the tenants said they did not sign it; she alleges it is a forgery. The manager said there are 3 tenants in that unit and one of them did sign it. The tenant provided in evidence a number of recorded conversations with the managers and landlord. She said she had telephoned from inside her house. She provided a copy of a meter showing decibel readings of over 82 which she says she took against the adjoining wall of unit 2. The landlord said it is a telephone App., not calibrated and no independent evidence of where she took the reading or of what. He also noted the average reading was low. He noted the tenant made another Application regarding rent in February 2018.

Her advocate said that the landlord was there in a truck in November 2017 and said he would deal with the problem. The landlord said he did not recall this episode but has explained to the tenant that they have done all they can to protect her peaceful enjoyment and the problem is that, when investigated, her allegations are unfounded. He said it may be better for the tenant to find another place that suits her requirements.

Her advocate said the tenant called her in January 2018 regarding the noise problems and she pointed out the previous decision and the requirement for proof of allegations. She said that is why the tenant has been using a decibel measure and recordings. She pointed out that another tenant was evicted and the tenant never complained about them so she is not extra sensitive. She had not complained about an adjoining tenant who played the piano or other things and she has lived there since 2012. A colleague of the tenant's partner who visited on an afternoon in June 2017 stated he heard the neighbour in unit 2 going in and out and slamming his door. The manager explained the maintenance person had to do some repairs to the door as it had to be banged to close properly. However after it was fixed, the tenant still complained.

We moved on to the tenant's claim for compensation of $10,000 for disturbance of her peaceful enjoyment, her pain and suffering and exacerbation of her son's mental health issues for over two years. She states the landlord has not complied with the Act as he has ignored her and failed to protect her peaceful enjoyment as required. Her advocate states she examined the tenant's calendar and saw on it many days where she has written "all is quiet" and many days were extreme noise is noted. The tenant said there is bass going 'boom' 'boom' and it drives her son crazy.

The tenant also claims her back lawn is not maintained by the landlord but it was for a few years at first. The landlord stopped after the dispute hearing about the rent increase. The landlord said his elderly father cut the back lawns at first but it is not in the tenant's leases. They advised all the residents in a letter last year (in evidence) that they are responsible for the maintenance of their own backyards. Their back lawn is for their exclusive use and they are required to maintain it. The landlord found many yards difficult to access because they had to enter through another neighbours and get permissions and many residents keep furniture and have dogs in their yards. They can borrow a lawn mower and weed eater at any time. The tenant said someone in the tenancy branch had told her she was grandfathered by section 14 and the landlord was responsible to maintain her back yard.

In a last submission, the tenant's advocate said the tenant just wants peace. She has tried many avenues and made lots of calls without success. The landlord said the tenant had contacted Bylaw Officers, Police officers and harassed them. They have spoken to the alleged offending tenant and surrounding tenants to do their best. However, they have found her allegations are unfounded. None of the officials she has contacted have issued fines or laid charges. The landlord believes she has a toxic relationship with the tenants next door and he needs to end this tenancy so she can find a place more suitable for her family's needs.

A large amount of evidence of documentary, photographic and audio evidence was provided by the parties. I have considered all of the evidence but only those items relevant to the Decision are noted.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that she or a person permitted on the property by her has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find letters from the surrounding tenants note they have no problem with the behaviour of the tenants in unit 2 and they don't hear unreasonable noise. One of the letters is from a former tenant who lived in unit 1; I find this persuasive as they would not have a reason for bias to protect their tenancy. Furthermore, when I listened to the audio recordings of the tenant to the managers complaining about the noise emanating from her neighbour's unit which she states were made from her own home, I could hear no noise from anyone. When she had a recording of a conversation made outside with a previous manager, I could distinctly hear machine and other sounds. In respect to her submission of decibel readings, I find them unreliable as they were an App on her cell phone which is not documented as calibrated. Also, the position of the reading and distance is important; for example, if rested against her neighbour's wall, the wall would magnify sounds. I find through her continuous allegations about the tenants in unit 2, she has seriously interfered with their peaceful enjoyment.

I find she has also interfered with the peaceful enjoyment of unit 2 by attending their children's school and making problems for their daughter. In respect to C.M's evidence concerning the banging door, I find this happened in June 4, 2017 and may have been caused by a problem with the door which the manager arranged to have repaired.

I note in a previous Decision dated January 5, 2017, it was found "the landlord responded reasonably to the Tenant's noise concerns for a breach of her right to quiet enjoyment as a result of noise emanating from unit #2" (page 8). In the same Decision on page 10, the arbitrator noted, "I find that the landlord may have the right to end this tenancy in the future if the tenant complains again about noise coming from unit #2 to the Landlord, to the police, or to the occupants of unit #2, unless she has corroborating evidence from an unbiased independent source. Conversely, the Tenant may be entitled to compensation if the Landlord does not protect her right to quiet enjoyment is she presents him with such evidence".

In summary, I find the weight of the evidence is that the tenant and/or her family have significantly and unreasonably disturbed the peaceful enjoyment of other tenants and the landlord. I find she has again made complaints without substantive evidence. I dismiss her application to cancel the Notice to End Tenancy. The tenancy ends on June 30, 2018 in accordance with the Notice but the landlord said he requested an Order of Possession effective July 31, 2018 to give them time to move.

She also claims compensation for the landlord's failure to protect her peaceful enjoyment contrary to his obligation as set out in section 28 of the Act. I find sections 7 and 67 of the Act provide criteria for awards for compensation. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find insufficient evidence that the landlord failed to comply with section 28 of the Act to protect the tenant's peaceful enjoyment. I find in the recorded conversations with managers and in the written documents, the weight of the evidence is that the landlord tried diligently to address her concerns and solve the problem by approaching unit #2, by investigating the alleged noises personally and through interviews with other tenants. They found her allegations unfounded. However, I find the weight of the evidence as stated above is that this tenant was the instigator of the disturbance of reasonable enjoyment of unit #2 and author of the problem. I dismiss this claim of the tenant.

In respect to her claim for lack of lawn maintenance, I find it is not in her lease. She referred to advice on section 14 of the Act. That section refers to lease terms and the landlord arbitrarily attempting to change them. I find the weight of the evidence is that her back lawn maintenance is not included in her lease so she was never entitled to it so it cannot be 'grandfathered'. If an elderly relative of the landlord cut it at one time, it was a privilege and a gift but I find this did not bind the landlord to be obligated to continue doing it. Furthermore, I find Policy Guideline 1 of the Residential Policy Guidelines specifically notes under "Property Maintenance" #4: *Generally a tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance which includes cutting grass, clearing snow.* I dismiss this portion of her claim.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The balance of her claim is dismissed without leave to reapply. Her filing fee was waived. The tenancy is at an end on June 30, 2018. An Order of Possession is issued to the landlord effective July 31, 2018 as he requested.

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 27, 2018

Residential Tenancy Branch