



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 29, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on September 1, 2016 as a verbal month to month tenancy. Rent is \$750.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$375.00 at the start of the tenancy. The Tenant said no move in condition inspection report was completed for this tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 21, 2018 by personal delivery on September 21, 2018. The Landlord said the Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reasons on the 1 Month Notice to End Tenancy for Cause are that the Tenant has significantly interfering with or unreasonably disturbing another tenant or the landlord and the Tenant has engaged in illegal activities that adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Landlord said there have been many text messages from the upper tenants about noise and harassment from the Tenant. The Landlord said three incidents that lead to the issuing of the 1 Month Notice to End Tenancy are as follows:

- 1). The Landlord said the previous tenants moved out of the upper unit because the Tenant made complaints about them and harassed them. The Landlord provided a large number of copies of text messages from both the Tenant and the upper tenants. (It should be noted the copies are not the original text messages but typed copies with dates but no email addresses). The Landlord said he told the Tenant verbally and by text message to stop making noise and harassing the upper tenants. The Landlord said no formal warning letter was issued about the noise issue or the harassment. The Landlord continued to say much of the harassment was about the hydro costs. The tenants shared the cost 50/50 and the Tenant complained about the upper tenant's hydro use and the cost of hydro. The Landlord submitted a note written by the Tenant which he views as harassment to the upper tenants.
- 2). The second reason for the Notice to End Tenancy was noise issues between the Tenant and the upper tenants. The Landlord said the Tenant pounded on the ceiling of her unit at night to get the upper tenants to quiet down. The Landlord said this was a noise issue as well as harassment of the upper tenants. The Landlord continued to say the Tenant also rang the door bell as a method of telling the upper tenants to quiet down. Again the Landlord said this was a noise issue and harassment.
- 3). The third incident was the Tenant put a swimming pool in the backyard without authorization and it took the Tenant 5 weeks to remove it. The Landlord said this put him at risk for an insurance claim if anyone got hurt in the pool because the yard is not fully fenced.

The Landlord continued to say the Tenant has been late with the rent many times as well but he did not include repeatedly late rent payments as a reason on the Notice to End Tenancy dated September 21, 2018 so it is background on the Tenant, but not a reason cited to end the tenancy.

The Tenant said the Landlord's claims are untrue and she made the following statements regarding each of the points the Landlord made:

1). The Tenant said she was not aware that the previous tenants moved out because of her until the Landlord told her. Further she is not sure that the issues between the tenants are the full reason for the eviction notice. The Tenant said the Landlord may want to end the tenancy to increase the rent for the next tenants. The Tenant said she tried to talk with the upper tenants about the noise in the unit and she believes she did it in a non harassing way. The Tenant said she wrote a note to the upper tenants about the hydro payments and usage. The Tenant said she didn't think it was harassing in any way. The Tenant continued to say when she moved in the hydro was to be split 50/50 with only one tenant in each unit. The situation now is the upper unit has two people and the hydro has not been adjusted to reflect this. The Tenant said the upper tenants made as much noise as she did and she believes they harassed her as well about the hydro. The Tenant said she only received two copies of hydro bills in the two years she has been renting. The Tenant said she has asked the Landlord for hydro bills but he has not provided the invoices to her.

2). The Tenant said the walls and ceilings in the unit are very thin and noise travels through them. The Tenant continued to say she talked to the upper tenants about their noise and she did tap on the ceiling twice to indicate she would like the upper tenants to quiet down. The Tenant said when she tapped on the ceiling it was late at night and the upper tenants were very noisy. The Tenant continued to say that when the Landlord told her not to hit the ceiling again she stopped and she has not done it again. The Tenant denied ringing the door bell to harass the upper tenants. The Tenant said the upper tenants were as noisy as she was and the house is not sound proof so noise is a problem.

The Landlord agreed the house is older and there is no sound proofing between the rental units.

3). The Tenant said that she did put a swimming pool in the backyard and when the Landlord gave her written notice to remove it she removed it in approximately 5 hours.

Further the Tenant said she has not done anything illegal in the rental unit.

The Landlord said there was discussion about removing it for many weeks and the Tenant did remove it immediately after written notice was given. .

The Tenant said in closing that she is a quiet tenant and she tries to work with other tenants when they move in. The house is old and the walls are thin so noise is an issue for both the upper tenants and for her. This is not her problem but the Landlord's issue. The Tenant said she wants to continue the tenancy as the rent is below market rent in

the area. Further the Tenant thinks the Landlord may want to end the tenancy so he can increase the rent to the next tenants.

The Landlord said in closing that Tenant has cost him a good tenant because the previous tenants moved out as a result of the Tenant harassing them about the hydro payments and usage and because the Tenant was noisy. The Landlord said he does not want to loss the present upper tenants for the same reasons therefore the Landlord said he wants to end the tenancy with the Tenant as soon as possible.

Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. The Landlord believes the Tenant is harassing other occupants in the rental complex and it has resulted in the Landlord losing tenants. The Tenant says that she has not harassed the upper tenants and she has complied with the requests the Landlord has made to her. The Tenant said she tapped the ceiling twice and she has stopped hitting the ceiling to tell the upper tenants to quiet down. Further the tenant said she removed the swimming pool as soon as she received written notice to do so.

It appears from the testimony and evidence submitted there are noise issues in this rental unit. The text messages are from both the Tenant about the upper tenants and the upper tenants about the Tenant. Further the Landlord agreed there is no sound proofing between the rental units. I find the noise issue in this rental complex is a shared problem by all the participants, the Tenant, the upper tenant and the Landlord. As well it is a Landlord's duty to provide written tenancy agreements for all tenancies and in that agreement the Landlord may want to address the issue of noise for this particular rental complex. I accept the Tenant's testimony that the rental complex has noise issues and that it has caused problems between the tenants. As well I find the text messages submitted by the Landlord do show that there are noise problems in this rental complex but the messages show the problems are from both the upper unit and the lower unit. Consequently, I find the Landlord has not established grounds to show the Tenant has interfered with or disturbed other occupants, given the deficiencies in the rental complex to the level required by the Act.

Further I have reviewed the letter the Tenant wrote to the upper tenants about the hydro and I find it to be informative and polite. As this evidence was sited by the Landlord as harassing the upper tenants, I find the Landlord has not proven harassment by the Tenant with this letter. Further I have read through the text chains and although the messages can be hard to follow as they are copies with no identification I was unable to find a text message that reached the level of harassment. I find the Landlord has not proven the Tenant harassed the upper tenants.

Consequently the parties will abide by the following decision. In Section 47 of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **engaged in illegal activities** that adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

In this case it is my finding that the Landlord has not proven the reasons given for ending the tenancy have reached the level of **unreasonableness, significance or seriousness** required by section 47 of the Residential Tenancy Act. I find in favour of the Tenant and I order the 1 Month Notice to End Tenancy for Cause date September 21, 2018 to be cancelled and the tenancy is ordered to continue as agreed to in the verbal tenancy agreement.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding by deducting it from the December 2018 rent. The December 2018 rent is adjusted to \$650.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated September 21, 2018 is cancelled and the tenancy is ordered to continue.

The December 2018 rent payment is adjusted to \$650.00 so that the Tenant can recover the filing fee of \$100.00 for this proceeding from the Landlord.

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: November 06, 2018

Residential Tenancy Branch