



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served the notice of dispute resolution package via registered mail on December 31, 2018. She provided a Canada Post Tracking Number which is reproduced on the cover of this decision. The landlord confirmed receipt of the notice of dispute resolution package via registered mail. I find that the landlord was deemed served with this package on January 5, 2019, five days after the tenant mailed it, in accordance with sections 89 and 90 of the Act.

The landlord testified that the tenant was served her evidence via registered mail on January 25, 2019. She was unable to provide a tracking number. The tenant confirmed receipt of the evidence package. I find that the tenant was deemed served with this package on January 30, 2019, five days after the party served it, in accordance with sections 88 and 90 of the Act.

Preliminary Issue – Additional Evidence

On January 3, 2019, the tenant requested copies of police reports from the Vancouver Police Department which she believes are relevant to determining this case. These documents were not provided to her by the VPD prior to the hearing. The tenant entered into evidence a letter from the VPD stating that she could expect to receive the documents on February 14, 2019.

As the tenant, through no fault of her own, was unable to obtain copies of these records prior to the hearing, I do not find that it is in the interest of fairness to exclude them. The tenant testified that these records would corroborate her testimony regarding certain disruptions she alleges were caused by the tenant who lives in the unit below hers (the **"Basement Tenant"**).

I permitted the tenant to submit copies of these records to the Residential Tenancy Branch no later than 4:00pm February 15, 2019, for my consideration. I ordered that, if she did so, she must also provide copies of the documents to the landlord.

The tenant submitted these records on February 13, 2019 to the Residential Tenancy Branch. I have reviewed them, and will discuss their significance in my analysis below.

Issue(s) to be Decided

Is the tenant entitled to:

- a cancellation of the Notice;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement; and
- recover her filing fee for this application from the landlord.

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties and their witnesses, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a month to month tenancy in July of 2012. Monthly rent is \$1,225.00. The tenant rents the upper floor of single detached house. On December 24, 2018, the landlord sent the Notice to the tenant by registered mail. The tenant confirmed receipt of the Notice on December 30, 2018. The Notice had an

effective date of January 31, 2019. It set out the reasons for the issuance of the Notice as:

- The tenant or a person permitted on the property by the tenant has :
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - Seriously jeopardized the health or safety or lawful right of another occupant or landlord.

The Notice set out the particulars of these claims as:

- Stomping on the floor two to three times a week as early as 5:00 am;
- Purposely turning on the cold water when the Basement Tenant is in the shower, scalding the Basement Tenant;
- Threatening to kill the Basement Tenant; and
- Putting food waste outside the Basement Tenant's bedroom window.

The landlord indicated that there were many arguments between the tenant's brother and the Basement Tenant, and that the police were called.

The landlord did not submit any police reports into evidence, nor any evidence that he had attempted to obtain them.

The landlord called the Basement Tenant as a witness, who confirmed the allegations contained in the Notice. He testified that these issues started when the tenant's brother came to live with her. He testified that he finds the noise unbearable, and that it causes him to lose a great deal of sleep, which is dangerous for him, as his employment requires him to drive long distances, and climb high structures.

The landlord testified that they have asked the tenant's brother to stop such offending conduct, but that they continue to receive complaints from the Basement Tenant. Accordingly, they issued the Notice.

The tenant denies that she or her brother is causing the noise alleged by the Basement Tenant. Rather, she testified that it is in fact the Basement Tenant who causes the majority of disturbances at the rental property.

The tenant testified that she has called the police on multiple occasions to deal with noise complaints about the Basement Tenant. She submitted these reports (as discussed above), which include three such noise complaints.

The tenant's brother was called as a witness, and denied that he ever threatened to kill the Basement Tenant. He testified that he does not "stomp" early in the morning, but that he is up that early sometimes. He testified he walks in a reasonable manner. He testified that, on one occasion, he did use the water upstairs when the Basement Tenant was in the shower, which may have caused the Basement Tenant to be scalded, but that it was unintentional. He testified that after this occurred, the Basement Tenant yelled and screamed at him through the ceiling.

The tenant also called her daughter as a witness, who lived with the tenant for a period of time. She testified that she observed the Basement Tenant shouting at the tenant or her guests on multiple occasions. On one occasion, she was doing laundry at 11:00am, and shortly thereafter she heard the Basement Tenant yelling and swearing at her, and banging on the ceiling. She testified that she went downstairs to speak with him, but that he did not answer the door. She testified that the tenant always ???? took care to avoid causing too much noise, as she knew the Basement Tenant to be volatile. In a written statement the tenant's daughter writes "we never knew what would set [the Basement Tenant] off and it was no way to live".

The tenant also called a friend of hers as a witness. Her friend witnessed similar behaviour from the Basement Tenant: yelling and swearing at the tenant through the floor at little provocation.

The tenant also entered into evidence a letter from a neighbour who writes in part:

[The Basement Tenant] is extremely abusive to me and my family. He is aggressive and swears using the F word and calling us names [...] on many occasions.[...] He can be intimidating, extremely rude, and aggressive. [...] I have heard him yell at different times of the day and night.

The tenant testified that she has advised the landlord of the Basement Tenant's conduct, but the landlord has not taken sufficient steps to stop it.

The Basement Tenant denies this type of conduct alleged by the tenant and her witnesses.

The tenant testified that she wants the landlord to comply with section 28 of the Act and provide her with quiet enjoyment of the rental property, and to respond to her complaints reasonably.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

In this case, I find that the landlord has the onus to prove that the tenant, or someone she has permitted on the property, has acted as alleged in the Notice.

The landlord, in relying on the testimony of the Basement Tenant, argues that the tenant is causing unreasonable levels of noise. The tenant called a number of witnesses whose testimony tells a different story: the Basement Tenant is loud and unreasonable, and is the source of conflict on the rental property. The tenant's position is that, if I accept this fact, I must not place any weight on the testimony of the Basement Tenant, and must cancel the Notice, as the landlord's relied on the Basement Tenant's version of events when issuing it.

On a balance of probabilities, I find the tenant's narrative (that the Basement Tenant causes unreasonable amounts of noise) more likely than the landlord's, (that the tenant and her brother cause unreasonable noise). I base this finding on the number of witnesses called by the tenant who gave evidence regarding the Basement Tenant's conduct which supported the tenant's version of events.

Additionally, I find corroboration in the tenant's version of events in the police reports she provided which confirm that multiple noise complaints about the Basement Tenant were made.

The landlord failed to provide copies of any police reports which they alluded to in the Notice, which may have supported his claim.

In the face of the tenant's witnesses' testimony, the letter from the tenant's neighbour, and the police reports, I do not find the Basement Tenant to be a credible witness.

Based on the foregoing, I find that the landlord has failed to meet their evidentiary burden to prove the tenant acted as alleged on the Notice. As such, I order that the Notice is cancelled.

The tenant has asked that the landlord comply with the Act and provide her with the quiet enjoyment she is entitled to pursuant to section 28 of the Act, which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

I find that the landlord has failed to comply with this section.

I find that the Basement Tenant has, throughout the tenancy, unreasonably disturbed the tenant, and deprived her of her right to quiet enjoyment.

Policy Guideline 6 states:

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I accept the tenant's testimony that the landlord was notified of the Basement Tenant's conduct. I find that the landlord has failed to take reasonable steps to correct it.

Accordingly, I order that the landlord comply with section 28 of the Act, and take steps to ensure that the tenant has quiet enjoyment of her rental unit. If the landlord fails to do this, the tenant may become entitled to compensation, per Policy Guideline 6. I make no such finding on this matter at this time.

As the tenant was successful in her application, I order that the landlord repay her filing fee (\$100.00). Pursuant to section 72(2) of the Act, I order that the tenant may withhold this amount from the next month's rent due to the landlord.

Conclusion

I order that the Notice is cancelled.

Pursuant to section 72(1) and (2) of the Act, I order the landlord to pay the tenant \$100.00, representing a repayment of her filing fee and that the tenant may deduct this amount from any rent due to the landlord.

I order that the landlord comply with section 28 of the Act, and take all reasonable steps to ensure that the tenant has quiet enjoyment of the rental unit.

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: February 27, 2019

Residential Tenancy Branch