Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the Tenant: CNC, FFT
For the Landlord: OPC, FFT

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The tenant's application for dispute resolution was made on January 15, 2018 (the "tenant's application"), and the tenant seeks the following relief:

1. an order to cancel a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47 of the Act; and,
2. a monetary order for recovery of the filing fee, pursuant to section 72 of the Act.

The landlord's application for dispute resolution was made on January 18, 2019 (the "landlord's application"), and the landlord seeks the following relief:

1. an order of possession for cause, pursuant to sections 47 and 55 of the Act; and
2. a monetary order for recovery of the filing fee, pursuant to section 72 of the Act.

Two landlord representatives and the tenant attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The matter was set for a hearing on February 25, 2019, and which was adjourned for the purposes of the landlord serving evidence on the tenant; the tenant confirmed that she had received the landlord's evidence before this hearing.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered.

Issues

1. Is the tenant entitled to an order to cancel the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is either party entitled to compensation for recovery of the filing fee?

Background and Evidence

The tenancy began on September 1, 2017, and monthly rent was $1,200.00. The tenant paid a security deposit of $600.00. A copy of the written tenancy agreement was submitted into evidence.

On January 7, 2019, the landlord issued the Notice (a copy of which was submitted into evidence) by serving it on the tenant's door. Page 2 of the Notice indicated that the Notice was being issued because 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 testified that another occupant (A.J.) complained on October 23, 2018, about the tenant making excessive noise on October 21, 22 and 23, 2018. A copy of the occupant's email complaint was submitted into evidence.

On October 29, 2018, the landlord gave the tenant a written warning letter. The letter, a copy of which was submitted into evidence, reads as follows (excerpt):

> It's been brought to my attention not for the first time that the noise level coming out of your apartment is completely unacceptable. As residents of a wood building, you seem completely ignorant of the fact that both of your upstairs and downstairs neighbours can hear your TV blasting at 6am. We have been also notified about loud argument using profanities and lots of screaming. Your neighbours are asking to break the lease or relocate because of your behavior.

The letter concludes with a warning that further violations will result in an eviction.

Occupant A.J. sent another email on December 27, 2018 to the landlord, complaining about further noise issues from the tenant commencing December 21, and into the days following. The police attended to the property in response to a call from the occupant about the noise.

On January 6, 2019, another occupant (N.M.) sent an email to the landlord regarding noise issues caused by the tenant.

There was some testimony from the landlord regarding vandalism to another tenant's door, though little (if any) evidence was tendered linking the tenant to the vandalism. For this reason, I will not address this aspect of the landlord's claim further.

The landlord's agents noted that the tenant has been quiet since the first hearing on February 25, 2019. However, they argued that an eviction is not the opportunity to get better, rather, a warning letter is the chance for a tenant to get better.

The tenant disputed most of the landlord agents' testimony and pointed out that the complaint from occupant N.M. was sent less than day before the Notice was issued. She further argued that while she lived in the rental unit for 20 months at that point, this was the first time that occupant N.M. complained about her.

The tenant argued that the complaints of occupants N.M. and A.J. mirror each other, even though they are made 20 months apart. She denied ever walking around in steel toe boots, or that she plays video games as is alleged by her neighbours.

Regarding the incident on December 27, 2018, the tenant explained that she had lost a family member on December 25, and that she was upset; hence her crying.

In rebuttal, the landlord testified that the upstairs neighbour (A.J.) called police 4 or 5 times. The landlord argued that when someone must call the police 4 or 5 times, it suggests that the disturbances are beyond reason.

In her final submissions the tenant argued that there "is a conspiracy of some sort" given that her two neighbours' complaints appear to be the same. She also stressed that the only time she has ever received a warning letter was on October 29, 2018.

Analysis

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.

Section 47(1)(d) of the Act states that “A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .] 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.”

In this dispute, the landlord claims that the tenant has significantly interfered with or unreasonably disturbed another occupant. The tenant disputes this.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. The landlord’s sole evidence are emails from an occupant who resides above the tenant, and an email from an occupant who resides below the tenant.

While section 75 of the Act does not bind me to the rules of evidence, I must carefully consider the probative weight of documentary evidence when that evidence, if accepted, would establish an applicant’s claim that the tenancy must end. In this dispute, the occupants’ emails are considered hearsay evidence. Hearsay evidence, with some limited exceptions, is generally inadmissible. For this reason, I do not accept the neighbours’ complaints about the tenant’s alleged noise issues.

I further note that the landlord did not call either of the complainant occupants as witnesses. The law requires that a party is obliged to present the best evidence available to prove their case. The best evidence would have been the complainant occupants.

In this case, the landlord could, but chose not to, have called the complainant occupants as witnesses. I find it peculiar that, despite the alleged extreme nature of the tenant’s noise-making (as vividly described by occupant A.J.), there is not a single other complaint from any of the tenant’s other neighbours. While I do not wish to speculate, the occupant A.J. may very well be extra-sensitive to noise, and that the building is a wooden-framed structure does not help such sensitivity (if there is such sensitivity).

I find that occupant N.M.’s complaint is suspect in that it was sent to the landlord only a day before the Notice was issued, and I find it rather unusual that—despite the extent of the tenant’s disturbances—occupant N.M. did not complain earlier.

There were multiple references during testimony to the police coming on several occasions. However, not a single police report was submitted into evidence that might establish the grounds on which the police attended to the rental unit, such as noise.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was issued. I find that the landlord has failed to provide sufficient evidence that the tenant significantly interfered with or unreasonably disturbed another occupant.

As such, the Notice, dated January 7, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was successful I grant her claim for reimbursement of the filing fee. I order that the tenant may deduct $100.00 from her rent for June 2019 in full satisfaction of this award.

Conclusion

The Notice, dated January 7, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 22, 2019

Residential Tenancy Branch