



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MISSION DISTRICT SENIOR HOUSING ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (application) from the tenant seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated October 31, 2019 (1 Month Notice).

The tenant, a legal advocate for the tenant IC (advocate), an agent for the landlord DS (agent) and a resident caretaker for the landlord PW (caretaker) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties confirmed that they had the opportunity to review the documentary evidence from the other party prior to the hearing. I find the parties were sufficiently served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their understanding during the hearing that the decision would be emailed to the landlord and to the tenant's advocate at the email addresses provided and confirmed during the hearing.

Issue to be Decided

- Should the 1 Month Notice cancelled under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on September 1, 2016. The parties agree that the 1 Month Notice was dated October 31, 2019. The tenant affirmed that they received the 1 Month Notice on October 31, 2019. The 1 Month Notice has an effective vacancy date of November 30, 2019. The tenant filed their application to cancel the 1 Month Notice on November 7, 2019.

On the 1 Month Notice, the landlord has alleged two causes, namely:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord wrote in the Details of Cause section of the 1 Month Notice the following:

SEE ATTACHED ADDENDUM

The attached addendum has a total of 10 items listed in support of the 1 Month Notice.

During the hearing, the agent confirmed that the tenant was not provided with a warning in writing regarding a breach of a material term and as a result, the parties were advised that the second cause was dismissed due to insufficient evidence, as the agent confirmed that a written warning regarding a breach of a material term was not served on the tenant.

As a result, evidence regarding the remaining cause listed on the 1 Month Notice was presented by both parties. The agent stated that on October 26, 2019 between 9:00 p.m. and 10:35 p.m. the tenant had their music very loud and that on October 28, 2019 between 5:15 p.m. and 5:35 p.m. the tenant also had their music very loud and on neither occasion did the tenant come to the door after repeated knocks at the door by the caretaker.

The agent presented two letters from other tenants in the building. One letter from the tenant in unit 506 (first letter) and a second letter from the tenant in unit 503 (second letter). In the first letter, it is alleged that the noise was from 6:15 p.m. to 9:15 p.m. In the second letter, it says the music was very loud at 9:30 p.m. until after midnight.

The tenant testified that on October 26, 2019, they fell asleep with the music on and after waking up, they turned off the music. The tenant stated that on October 28, 2019, they were not asleep but did not hear anyone knocking on the door. The advocate submitted that the tenant has addressed the music complaints by purchasing headphones and will use the headphones to avoid disturbing anyone in the building.

The advocate submitted that the times presented were inconsistent with one person saying the music was from 8:15 p.m. to 10:00 p.m., another person stating the music was from 9:00 p.m. to 10:35 p.m. and someone else stating the music was from 9:30 p.m. to after midnight. The advocate also questioned the statement from the caretaker by asking how the caretaker could hear music from the first floor when the tenant lives on the fifth floor in a concrete building. The agent confirmed that the tenant has not been provided any prior warnings regarding music in their rental unit before the 1 Month Notice was issued.

The agent stated that they believe they have provided sufficient evidence to support the 1 Month Notice and that the tenant significantly interfered with other occupants in the building on October 26, 2019 and October 28, 2019. The agent raised the issue in one of the letters regarding a short time period where the music was turned off, which the tenant did not agree to during the hearing, and was not supported by the other evidence presented.

Analysis

Based on the testimony of the parties, and the documentary evidence submitted and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of November 30, 2019. The tenant disputed the 1 Month Notice on November 7, 2019, which is within the ten-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord alleges the two causes noted above; however, as mentioned above, the breach of a material term cause was dismissed during the hearing due to insufficient evidence as the landlord admitted that they did not provide a written warning to the tenant to advise of a breach of a material term. Therefore, I am left with the only remaining cause listed by the landlord, which is the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

For the remaining cause, I agree with the advocate that the evidence from the agent, caretaker and other tenants were inconsistent. Furthermore, I find that if the music was turned off for a period of time, that at the very least, that fact would have been mentioned by the agent, caretaker and in both letters, which was not the case in the evidence presented. Furthermore, I note that the landlord did not provide any written warning to the tenant regarding the October 26, 2019 and the October 28, 2019 incident and instead, made the decision to attempt to evict the tenant by way of the 1 Month Notice without a warning letter and that the building is for seniors.

As the landlord has the onus of proof to prove that the 1 Month Notice is valid, I find that the landlord has provided insufficient evidence to prove that the 1 Month Notice is valid. I find the tenant's response to the music by falling asleep and purchasing headphones to listen to their music since the 1 Month Notice was issued, to be compelling. Therefore, I cancel the 1 Month Notice dated October 31, 2019 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

I ORDER the tenancy to continue until ended in accordance with the Act.

Conclusion

The tenant's application is successful. The 1 Month Notice issued by the landlord dated October 31, 2019, is cancelled. The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to the parties as described above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 13, 2020

Residential Tenancy Branch