



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SEAMONT INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, CNL, OLC

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

Neither party submitted a copy of a Two Month Notice to End Tenancy for Landlords Use of Property. The tenant "checked" off the box as an issue as part of her application however, as neither party submitted documentation or testimony for that issue, I hereby dismiss that portion of the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to have the One Month Notice to End Tenancy for Cause cancelled? If not, should the landlord be granted an order of possession?
Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord, agent and witness gave the following testimony. JM testified that the tenant moved in November 1, 2008. JM testified that the tenant has a history of playing loud music and disturbing other tenants. JM testified that the tenant has been given five caution letters since November 2019. JL testified that despite being served the One Month Notice on April 15, 2020 she received a noise complaint about the tenant. DN testified that she has disturbed him several times since moving into the building in October 2019. DN testified that it happens once a week or every two weeks. DN testified that he asks her to turn down the loud music. DN testified that she will sometimes comply, and other times ignore him. JM testified that the landlord has been very clear that loud music will not be tolerated, and that message was conveyed to the tenant on numerous occasions. JM seeks an end to the tenancy and an order of possession.

Counsel for the tenant submits the following. Counsel submits that the tenant has a small radio, laptop, and television that is incapable of creating the level of noise as alleged by the landlord. Counsel submits that the tenant does not listen to “Rock and Roll or Heavy Metal”, but rather, CBC radio and classical piano music. Counsel submits that the complaints were not contemporaneously written nor was a sample of the noise submitted for this hearing.

MP gave the following testimony. MP testified that she does agree with one of the complaints from November 2019 but adamantly disputes the remainder of the landlord’s allegations. MP testified that she has lived in the building for 12 years and has not had ongoing issues with noise as claimed. MP testified that the caretaker and the witness have a personal issue with her. MP testified that she is not sure that the caretaker is qualified for the position she holds. MP testified that she wishes to remain in the building and is happy to wear headphones if it will resolve the issue.

Analysis

When a landlord issues a notice under section 47 of the Act, they bear the responsibility to provide sufficient evidence to support the issuance of the notice. The tenant testified that she was never served the warning notices and that the resident caretaker and DN have a personal issue with her. The tenant did not provide sufficient evidence to support either of those statements. I found the tenants testimony concerning as she would provide a version of events and then when questioned by her own counsel to clarify the

matter, she would offer an alternative version with different facts. Although the landlord has provided *some* evidence that the tenant has caused some disruption in the building and bothered other tenants, they have not satisfied me that it is at a point in which the tenancy must end. In DN's own testimony he stated that it is "random" event when it does occur and not a specific and consistent pattern. I have no doubt that the tenant's actions are a nuisance, but I am not satisfied on a balance of probabilities that it is at a level that it has significantly interfered with another tenant or the landlord or that the tenancy should end.

I find it timely to put the tenant on notice that, if these alleged behaviours were to occur in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

The tenant has not provided sufficient evidence to be granted an order compelling the landlord to comply with the Act, regulation or tenancy agreement. For absolute clarity, I find that the landlord has conducted their business reasonably and in accordance with the Act and no order is required.

Conclusion

The One Month Notice to End Tenancy for Cause dated February 5, 2020 is set aside, it is of no effect or force. The tenancy continues.

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: April 20, 2020