



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This review hearing of an original decision dated February 11, 2020 (the “Original Decision”) was reconvened on the Tenant’s application pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - section 47; and
2. An Order for the Landlord’s compliance - Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

On June 2, 2020 the Landlord submitted documentary evidence to the RTB for this reconvened hearing. The Tenant confirms that no police report was provided as evidence for the reconvened hearing as it has not yet become available.

The Interim Decision dated April 24, 2020 only allows the Landlord to provide evidence in response to the Tenant’s allowed evidence of a police report. Given the Tenant’s undisputed evidence that no police report was provided I find that the Landlord’s evidence submitted after the Interim Decision is not allowed and I will not consider this evidence.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reasons?

Is the Tenant entitled to an order for the Landlord to comply?

Background and Evidence

The tenancy under written agreement started in 2015. Rent of \$1,066.00 is payable on the first day of each month.

On December 5, 2019 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice"). The reasons for the Notice are that the tenant or a person permitted on the property by the tenant

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The Landlord states that around February 7, 2020 the Tenant installed a camera on the premise and that this camera collected videos of the lower tenant coming and going from its unit. The Tenant states that cameras were installed at the end of January or February 2020 due to a break in of the Tenant's car in mid January 2020. The Tenant states the Landlord requested that the cameras be removed and that the Tenant removed the cameras on March 14, 2020.

The Landlord states that the current lower tenant moved into its unit in September 2019. The Landlord states that the Tenant has been parking its car with the exhaust pointed towards the lower tenant's window and door. The Landlord states that this causes health concerns for the lower tenant who has informed the Landlord that this exhaust has caused the lower tenant to be sick on multiple occasions. The Landlord states that it has no medical evidence to support that the health of the lower tenant has been affected or could be affected. The Landlord states that it has not seen the vehicle

running with exhaust but that a photo taken by the Landlord on December 28, 2019 as it was driving by shows the vehicle backed into the driveway and the Landlord states that the vehicle must have been running. The Landlord states that it did not pay attention to the exhaust.

The Landlord states that the lower tenant has complained numerous times since the beginning of its tenancy of noise coming from the upper unit. The Landlord states that in the middle of the night the lower tenant is awoken by noise from the Tenant stomping on the floor and by the sound of something like a marble ball being dropped on the floor. The Landlord states that the lower tenant has sent the Landlord 100's of texts complaining about this noise and that it is most disturbing when the noise occurs to 4:00 or 5:00 am. The Landlord states that a rock insulation sound barrier is in place on the floors between the units. The Landlord states that the Tenant's unit has laminate over underlay but no carpet on the floors.

The Landlord's Witness TF is the lower tenant referred to by the Landlord. Witness TF states that since September 1, 2019 and on a constant basis the Tenant has been backing into the driveway and leaving its car idling for as long as 5 minutes during the summer and 15 minutes during the winter. Witness TF states that this occurs at the Witness's entry to its unit and that the exhaust fumes enter its unit resulting in headaches and nausea. The Witness states that this was reported to the Landlord in September 2019 and that the Witness has recently been diagnosed as having elevated carbon dioxide readings in its blood. The Witness states that no diagnosis of carbon monoxide poisoning has been made. The Tenant states that it backs its vehicle onto the driveway in order to unload groceries and that the vehicle is never running while this is done. The Tenant states that it has never left the car running on the driveway. The Tenant states that none of the Landlord's photos show any exhaust.

Witness TF states that between September and December 2019 the Tenant has harassed and slandered the Witness. The Witness states that the Tenant's boyfriend has slandered the Witness by referring to the Witness as a "Trixie and a prostitute". The Witness states that it overheard the Tenant in its unit call the Witness a profane name the day after the Landlord served the Notice. The Witness states that this was overheard from inside the Witness' unit. The Witness states that on December 8 or 9, 2019 the Tenant posted accusations and threats online. The Witness states that the Tenant posted that "my f---ing neighbour turned off my lights" The Witness states that it was not identified by name or address in the post as the neighbour in question.

Witness TF states that the Tenant makes loud stomping noises and has parties every weekend. The Witness states that the police were called once in relation to an alarm incident on January 19, 2020.

Witness RD states that it has no relevant evidence of anything done by the Tenant prior to the Notice being served.

The Tenant states that it is a single mother with three children and that they only live ordinarily. The Tenant states that it never has parties on the weekends except for a "reveal party" that occurred 4 years ago. The Tenant states that Witness TF is very difficult to deal with as the Witness documents the Tenant's every move, gives the Tenant the middle finger and is constantly harassing the Tenant. The Tenant states that the Witness is constantly talking to the Tenant's children but as the talk is petty the Tenant lets it go. The Tenant states that it has a difficult relationship with Witness TF and has never had any problems with any other tenant or neighbour. The Landlord confirms that no complaints were ever made by the previous tenant. The Landlord states that it has no issues with Witness TF who is extremely tidy in both the yard and the unit. The Landlord states that prior to serving the Notice, and sometime in November 2019, the Landlord received a 6-page complaint letter from Witness TF that sets out dates and times of incidents being complained about.

The Landlord states that Witness TF has complained twice that the Tenant's boyfriend smokes cannabis on the driveway and on the back porch. The Landlord states that this harmed Witness TF as Witness TF does not like it. The Landlord states that in meeting with the Tenant it had no interest in discussing the issues or adjusting to social living. The Landlord states that after this meeting the Tenant blasted Witness TF. The Tenant states that it is not aware of anyone smoking on the driveway. The Tenant states that there has never been any smoking on the back porch.

Analysis

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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, or
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 82(3) of the Act deals with a review of a decision and provides that following the review, the director may confirm, vary or set aside the original decision or order.

As the matter of the camera occurred after the Notice was issued and as this has since been removed, I consider that this matter is not relevant to whether the reasons stated to be in existence at the time of the Notice are valid. I therefore do not consider this evidence in determining the validity of the reasons for the Notice.

As there is no evidence that the smell of cannabis has caused significant problems or health concerns for anybody I find that the Landlord has not substantiated that this activity, if it occurred, is reason to end the tenancy.

As the Landlord has no evidence to support that the Tenant is leaving the car running while parked on the driveway and given that Witness TF's oral evidence is countered by the Tenant's oral evidence, I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate that the Tenant left or is leaving its car running. The Landlord gave no evidence of having inspected Witness TF's unit for leakage from this area through the doors or windows into the Witness TF's unit and there is no evidence of a carbon monoxide monitor in the unit. It may be that the Landlord must take actions to ensure that Witness TF's health problems are not caused by any deficiency within its own unit.

The only evidence the Landlord has of the Tenant's other behavior comes from Witness TF's complaints. Witness TF gave only oral evidence that was directly rebutted by the Tenant's oral evidence. The Tenant also provided video evidence to support Witness TF's behavior. They each give evidence of harassment by the other. For these reasons I find that the Landlord's Witness evidence did not make any difference to the original finding as set out in the Original Decision as follows:

As the Landlord has provided little persuasive evidence that the Tenant is the instigator or aggressor and entirely at fault for the conflict between her and the downstairs tenant, and as I am somewhat doubtful, from the video, of the legitimacy of the downstairs tenant's allegations, I am satisfied that the parties have been mutually antagonistic towards each other. Consequently, I do not find that the Landlord has submitted sufficient evidence to substantiate service of the Notice upon the Tenant.

I also note that Witness gave evidence of overhearing the Tenant speaking from its own unit. The Tenant gave evidence of normal living activities inside its unit. This indicates

to me that there are problems with sound proofing between the units, despite the Landlord's unsupported evidence of an existing sound barrier.

The Original Decision cancels the Notice as invalid for its stated reasons. No evidence was provided in relation to the Tenant's claim for an order of compliance and I note that the Original Decision did not deal with this claim either. As there is no evidence to support on a balance of probabilities any different outcome for the Tenant's application, I confirm the Original Decision.

Conclusion

The Original Decision is confirmed.

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: June 17, 2020

Residential Tenancy Branch