



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The tenant attended the hearing. The landlord was represented at the hearing by its operations manager ("**SM**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and SM confirmed, that he served the landlord with the Notice of Dispute Resolution Proceeding Package. SM testified, and the tenant confirmed, that the landlord served the tenant with its supporting evidence.

The tenant testified that on December 18 or December 22, 2020 (the tenant could not recall exactly), he mailed his supporting evidence to the landlord via ordinary mail to the landlord's mailing address. SM confirmed the address was correct. However, SM testified that she did not receive the tenant's evidence package, but that she would follow up with her office staff. SM indicated that she would be able to continue with the hearing, in any event.

Section 88 of the Act permits service of documentary evidence by ordinary mail. I accept the tenant's testimony that he sent it by ordinary mail. As such, I find that the tenant served the landlord with his evidence in accordance with the Act. I note that the tenant's evidence consists of four short letters from other occupants of the residential property. I read these letters aloud, in their entirety, during the hearing, so that SM had an opportunity to respond to their contents.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

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

The tenant moved into the rental unit on September 3, 2008. However, at some point during the tenancy both parties lost their copies of the tenancy agreement. So, on March 5, 2019, the parties entered into a new, periodic tenancy agreement. Monthly rent is \$440 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$180 when he moved into the rental unit, which the landlord continues to hold in trust for the tenant.

On October 27, 2020 the landlord personally served the tenant with the Notice. It specified an effective date of November 30, 2020. The grounds to end the tenancy cited in the Notice were:

- 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;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- 2) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

SM testified that the landlord received several noise complaints about the tenant over the past year and a half. The landlord issued four caution notices to the tenant following these complaints, as follows:

- 1) May 3, 2019: the tenant caused “multiple disturbances by tenant into the early hours of the morning, 3am. Knocking on other’s doors, waking them up, and playing music loudly into the early hours of the morning”.
- 2) May 27, 2019: the tenant caused “excessive noise in unit from tenants and guests, resulting in the disturbance of other tenant’s quiet enjoyment of their units”
- 3) August 29, 2020: the tenant disturbed “another tenant in building in the early morning, with accusations of theft. [The tenant] insisted on entering the other tenant’s room and was asked to leave. He kept coming back. He may have been under the influence. [The tenant] has routinely disturbed other tenants in the building with noise complaints when quiet hours are in effect.”
- 4) October 27, 2020: the tenant “Was up all night drinking, music up loud, disturbing his neighbor below him. [The lower neighbor] did call police to make noise complaint but police did not come. [This neighbor] has made numerous complaints about tenant above him concerning noise, and harassment.”

The landlord provided two emails from the occupant of the unit directly beneath the rental unit (the “**lower neighbour**”) which corroborated the August 27 and October 27, 2020 caution notices. The landlord did not provide any documentary evidence corroborating the allegations set out on either of the May 2019 caution notices. During the hearing, SM reviewed her email inbox and testified that she received an email from the residence manager (who lives onsite) stating that the tenant was disturbing the other tenants on May 3, 2019. It was not clear if the residence manager heard the

disturbances themselves, or if they were recounting what other tenants told them. SM also testified that the other tenant mentioned in the May 27, 2019 caution notice was the lower neighbour.

SM testified that the landlord does not conduct independent investigations following the receipt of a complaint regarding disturbances. Rather, they review the email or letter provided by the complainant and issue a caution notice to the alleged disturber. She testified that the recipient of the caution notice can contact the landlord to dispute the allegations. She testified that the tenant never did this.

The tenant denied that he disturbed any of the buildings' occupants as alleged. He testified that all the complaints came from the lower neighbour. He testified that this individual used to live on the same floor as he currently does, and the individual was frequently very loud. He did admit that, on early May 3, 2019, he did go down to the lower neighbour's unit and knock loudly on the door. He denied doing so multiple times. He testified it was an isolated incident.

The tenant also testified that he was not home during the time during which the May 27, 2019 caution notice was served.

The tenant submitted four letters into evidence from other neighbours who live on his floor. His next door neighbour wrote:

I live next to [the tenant] for approximately two years. He is a great guy, a good neighbor and I myself have never heard noise coming from his suite.

The tenant's neighbor who lives across the hall from him wrote:

In six years of living across the hall I have never had any problem about noise or character re [the tenant]

Another neighbor wrote:

In the last few years, I haven't heard a peep, music or noise from [the rental unit].

I have heard [the lower neighbour] flipping out in the hall, beating (threatening) at [the tenant's] door.

One time I went out and put a sign on [the tenant's] door saying "[the tenant] is not home." [The tenant] left the night before to paint a friend's apartment and was gone for a few days. The noise was coming from across by McDonald's. The guy had a ghetto blaster.

The last time, I went out and gave [the lower neighbor] shit – seems to have worked. He beat on [the tenant's] door, woke him up and gave him shit for making noise. It wasn't him – he was sleeping.

I mentioned it to the building manager, but he doesn't want to get involved.

The final letter from one of the tenant's neighbors stated:

[The tenant] is being evicted for noise complaint but the thing is none of his neighbors are complaining, it's only the person who lives below him who is complaining. I have witnessed that person banging and yelling at his door on two occasions when [the tenant] was not even home; other neighbors also saw the same. The tenant has been my neighbor for six years and there is no legit reason for him to be evicted.

The person who lives below him does take priority because he is, or thinks he is, entitled because he is working.

I have witnessed him complain to others at the office and the manager always says the same thing to him "people have the right to live their life you're going to hear noise between 7:00 AM and 11:00 PM that's just the way it is".

(We live in close quarters)

SM stated that she understood all the individuals on the tenant's floor are close and suggested that they may have provided favourable statements to the tenant due to this closeness.

The tenant vehemently denied that these neighbours were lying. He testified that they were friendly, but not especially close. He testified that they would not lie for him.

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.

So, the landlord must prove it is more likely than not that the tenant acted as alleged on the Notice.

Based on the evidence provided to me, I find that the landlord has failed to discharge its evidentiary burden. The landlord has alleged that the tenant has caused repeated unreasonable disturbances in the building. The only documentary evidence tendered of these disturbances are two emails from the occupant who lives directly below the rental unit. I do not find that the existence of the caution notices serves to prove that the incidents they describe actually happen. Rather, they serve to recount an allegation made. The landlord did not conduct an investigation into the complaint, talk to other neighbours, to see if they also heard the noise complained of. Rather, the landlord issued the caution notice on basis of a single complaint and left it to the tenant to dispute if he disagreed.

I must weigh this evidence (or the lack thereof) against the statements of the tenant's neighbours. Without exception, these neighbours deny that the tenant has caused them any unreasonable disturbances. Two of them indicate that the lower neighbour has baselessly accused the tenant of causing noise by pounding on the tenant's door when the tenant was not home. I accept these letters as truthful. I am not persuaded by SM's suggestion that the tenant's neighbours have provided untruthful statements due to their close relationship with the tenant. Some evidence (a competing statement, a recording of the disturbance, for example) is needed to support such a claim.

After considering the evidence, I find that it is more likely than not that the tenant's neighbours have provided an accurate accounting of the conduct of the tenant.

I accept the tenant's testimony that, in May 2019, he knocked on the door of his lower neighbour's rental unit early in the morning. I accept his testimony that this was a one-time occurrence. I do not find that this conduct warrants an end to the tenancy.

I accept that the landlord has received complaints about the conduct of the tenant from his lower neighbour. However, I am not persuaded that these complaints are accurate. In order to form of a basis for an eviction, the landlord must support such complaints with additional evidence (such as statement from other neighbours which corroborate the complaint or recordings of the disturbances). A bare accusation from a single occupant of the residential property will not be sufficient to discharge the landlord's evidentiary burden when met with multiple statements to the contrary from other occupants of the residential property.

The landlord tendered the caution notices and supporting emails as evidence of the tenant's alleged material breach of the tenancy agreement and his serious

jeopardization of the health safety or lawful right of another occupant. For the reasons set out above, I do not find the documents in evidence support such claims.

As such, I grant the tenant's application and cancel the Notice.

Conclusion

The Notice is cancelled and of no force or effect. The tenancy shall continue.

I order the landlord to provide a copy of this decision to the tenant immediately upon receipt.

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: January 26, 2021

Residential Tenancy Branch