



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Proline Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Introduction

The tenant disputes a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”).

Attending the hearing were the tenant, his two advocates, and a residential property manager acting on behalf of the landlord. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the tenant entitled to an order cancelling the Notice?

Background, Evidence, and Facts

Relevant oral and documentary evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The tenancy began December 1, 2017 and monthly rent is \$932.75. A copy of the written residential tenancy agreement was in evidence. The rental unit is a bachelor unit in a three-rental-unit, wood-framed residential house in which a total of four tenants resides.

On October 5, 2021 the landlord served the Notice on the tenant by registered mail. A copy of the Notice is in evidence. Page two of the Notice indicated that the landlord sought to end the tenancy due to a breach of a material term of the tenancy agreement. Specifically, term 16 of the tenancy agreement, which states in full:

16. CONDUCT. The tenant or the tenant's guests must not carry out any illegal activity, create noise, annoy, interfere with or otherwise disturb the quiet enjoyment of another tenant, occupant, neighbour, or the landlord; nor must any noise or disturbing behaviour be repeated after a reasonable request from the landlord to cease such noise or behavior. In particular, the tenant or the tenant's guests must avoid loud conversation or other noisy or disturbing behaviour between the hours of 10:00 pm and 9:00 am. If the behaviour of the tenant or the tenant's guests in violation of this clause causes another tenant to vacate his or her rental unit, the tenant will be responsible for any resulting costs or losses incurred by the landlord.

Between June 2021 and January 2022 there were several written noise complaints from a tenant (SF) who lives below the tenant's rental unit. According to the "Details of Cause(s)" section of the Notice on page two, infraction letters were sent on June 1, June 9, September 14, and on September 20, 2021.

The first of the many complaints occurred on May 31, 2021, almost immediately after SF moved into her rental unit. The landlord subsequently issued several letters, or warning letters, to the tenant regarding the noise complaints. Most of the complaints were related to the tenant's playing of loud music, including two instances of him singing along loudly to Johnny Cash and Snoop Dogg. Some of the complaints, however, were what would be categorized as normal, ordinary living, such as walking, talking, coughing, and so forth. Additional complaints related to the tenant's alleged slamming of a screen door and heavy-footed stomping down the stairs.

Despite the repeated complaints from SF, followed up with warnings, the noise issues continued, and the landlord ultimately issued the Notice. More noise complaints have occurred since the Notice was issued, and more warning letters were forthcoming.

It is worth noting that an attempt by the property manager to mediate the ongoing issues between the various parties was made in mid-October. However, for reasons that I will not expand upon (given that the terms of any mediation are not in issue before me), the mediation was ultimately unsuccessful.

During the advocate's cross-examination of the property manager, it was established that the entirety of the noise complaints was from SF. No other tenant in the multi-unit residential property has complained about the tenant causing noise. Moreover, there have been no noise complaints made by any other tenant, present or former, against the tenant since he began living in the rental unit in December 2017.

Despite SF being the sole occupant making the complaints, the tenant has made best efforts to mitigate the ongoing issue. He has dismantled his small bookshelf stereo and has instead resorted to listening to much of his music on headphones.

Analysis

When a tenant disputes a One Month Notice to End Tenancy for Cause, the onus falls on the landlord to prove, on a balance of probabilities, the reason, or grounds for the notice to end tenancy being issued.

The Notice in this dispute was issued under section 47(1)(h) of the Act, which states that a landlord may give a notice to end the tenancy if “the tenant (i) has failed to comply with a material term [of a tenancy agreement], and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.” And in this dispute, the material term is term 16 of the tenancy agreement, specifically as it pertains to creating noise, annoying, and otherwise disturbing another tenant.

At the outset, it is worth acknowledging that the landlord’s residential property manager presented and argued his case in an articulate, confident, and forthright manner. The landlord’s evidence packages were comprehensive and, I note, reflected the property manager’s expertise and experience in these matters. I found the property manager to be a credible representative of his employer. The residential property manager, in attempting to resolve one tenant’s complaints against another tenant, upheld his duty and obligations as a landlord.

However, the entirety of the evidence needed to prove a breach of the tenancy agreement was that of SF’s written complaints. In cases where there is no dispute that a tenant breached the Act or a tenancy agreement, such third party written complaints may be sufficient to prove a ground for eviction. Yet, in a case such as the one before me, where the tenant and his advocates call into question the very nature and substance of those complaints, I must, in the absence of the complainant testifying on their own behalf, give the written complaints little evidentiary weight. The complaints were not submitted into evidence by way of a sworn affidavit, nor did SF testify under oath and under circumstances that would have afforded the tenant his right to cross-examine SF.

For these reasons, I place little evidentiary weight on the substantive evidence put forward in proving the tenant’s breach of the tenancy agreement.

It is also worth noting that there appears to be no other past or present tenant in the multi-unit residential property who complained about any noise. The tenant had lived in the rental unit noise-complaint-free for three-and-a-half years until, rather coincidentally, SF moved in. It is more likely than not that SF has taken a disliking of the tenant, or, equally plausible, she is simply sensitive to noise and has unrealistic expectations of noise within a residential property.

It is not lost on me that the tenant has likely made *some* noise that is heard by his neighbours. After all, the rental units are in close proximity in a wood-framed building. It is common knowledge that sounds transmit readily in such a property. In addition, what music may have transmitted to other tenants appears to have been mitigated through the tenant's efforts at dismantling his stereo and instead using headphones. The tenant is encouraged to continue his efforts at minimizing sound wherever possible.

In summary, after carefully considering all of the evidence before me, and in applying the law to the facts, I find that the landlord has not discharged its onus of proving that the tenant breached a material term pursuant to section 47(1)(h) of the Act. Therefore, it is my order that the Notice be cancelled, effective immediately. The Notice is of no legal force or effect and the tenancy continues until it is ended in accordance with the Act.

Conclusion

The application is granted. The One Month Notice to End Tenancy for Cause, dated October 5, 2021, is hereby cancelled.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal the decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: February 21, 2022

Residential Tenancy Branch