



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was given in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on October 1, 2017 and expired on September 31, 2018 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,625.00 was payable on the 1st day of each month, which has been increased to \$1,640.00 per month and there are no rental arrears. On September 15, 2017 the landlord collected a security deposit from the tenant in the amount of \$812.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 30 or so units, and the landlord's agent does not reside on the

rental property. A copy of the tenancy agreement has been provided by the landlord for this hearing.

The landlord's agent further testified that on February 16, 2022 the resident manager of the apartment complex (PT) served the tenant personally with a One Month Notice to End Tenancy for Cause (the Notice). A copy has been provided for this hearing and it is dated February 16, 2022 and contains an effective date of vacancy of March 26, 2022. The reason for issuing it states: Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. A Proof of Service document has also been provided for this hearing, which is not signed or witnessed, which states that the full name of person serving the notice is (P and C).

The landlord's agent testified that the Notice was given due to unruly conduct by the tenant and guests such as loud shouting, fighting and alleged abuse toward the tenant's girlfriend at the time. The resident manager spoke to the tenant about correcting his behaviour and that if the disturbances continued to happen the tenant's girlfriend would not be permitted on the rental property. There were multiple calls to police, which also causes a disturbance to other residents of the rental property. The tenant had full control to prevent it, and did not correct the behaviour. The landlord maintains the right to protect other tenants' rights to quiet enjoyment and to maintain the conduct of the premises.

The landlord's agent also testified that the disturbances are not a temporary discomfort, but an ongoing and persistent issue, which lead to the demise of quiet enjoyment of other residents. The landlord has provided 3 complaint letters as evidence for this hearing, which the landlord's agent testified are residents of the rental property.

The first is in 2 parts, one dated February 18, 2022, and the 2nd part is undated. It is written by the spouse of the Building Manager to the landlord company. It states that the writer is disturbed when police attend usually between 1:30 a.m. and onwards, and that the tenant's girlfriend has been screaming and crying into the intercom for the tenant to let her into the building. It also states that police chase her away but she returns, and disturbances take place in the tenant's rental unit or in the parking lot or on the street, screaming. It also states that it has been going on for well over a year and a half, and the tenant has been asked to keep her out of the building, but continues to bring her in.

The second letter of complaint is dated February 9, 2022 and sets out dates which have been challenging due to noise escalating from the tenant who resides in the suite

above. The dates are January 22, 2022 when extremely loud music was heard from about 4:00 p.m. to 7:00 p.m. and about every half hour during the night going in and out slamming the balcony door; January 24, 2022 at 10:45 a.m. arguing and profane language; January 26, 2022 at 7:55 a.m. screaming, and at 8:05 a.m. the writer called the Building Manager saying the tenant was hurting his girlfriend; and January 27, 2022 at 4:30 a.m. going in and out the balcony door very loudly until 6:00 a.m.

The third letter of complaint is dated February 24, 2022 and states that the writer has heard shouting and yelling, and on occasion was so concerning the writer was prepared to call police. It also states that knocking and yelling for attention was heard after midnight. It also states: "Do not let my info be made public."

The landlord's agent also testified that the landlord had provided a Mutual Agreement to End Tenancy in February, 2022, suggesting an effective date of vacancy of March 31, 2022 with the offer of half of a month's rent for free. The Building Manager also expressed those terms to the tenant verbally, and the tenant agreed to it, but did not follow through.

The tenant disputes the method and date of service of the Notice. The tenant testified that it was not served by the Building Manager, but the spouse of the Building Manager, who also wrote the first letter of complaint provided by the landlord for this hearing. Also, it was not served on February 16, 2022, but on February 18, 2022 after calling the tenant to the office. The Building Manager, (PT) did not serve it and he didn't agree to it. Later, he apologized to the tenant.

The tenant also disputes that he ever agreed to sign a Mutual Agreement to End Tenancy and to pay half a month's rent. The spouse of the Building Manager came to the tenant's suite but the tenant did not orally agree.

The tenant wasn't living in the rental unit between February 12, 2022 and April 5, 2022 and was housesitting for a friend. The tenant is currently in the Bahamas and plans to return at the end of this month.

Generally the tenant doesn't spend more than 6 months of the year in the rental unit, but has a home in New Brunswick and a daughter resides there. Other than the first year of the tenancy and during COVID, the tenant hasn't been home.

One of the complaint letters provided by the landlord is from a person who resides in the apartment below the tenant, and isn't even true. It contains no dates. During the last 6 months the tenant was at the rental unit for a limited amount of time. The tenant also

testified that he was out of the Country from December 26, 2021 until January 13, 2022. The tenant was in Mexico and contracted COVID on January 2, 2022 and was ill for 5 or 6 weeks after and had heart complications from the vaccine. The tenant was hospitalized toward the end of January, 2022 and wasn't feeling better until mid-February, 2022. The tenant was so sick he could hardly get off the couch, so the complaints are ridiculous.

The first complain letter provided by the landlord is written in 2 parts by the spouse of the Building Manager. The tenant finds it appalling because she knew better and it's a low blow to accuse the tenant of harming a female.

The shorter letter provided in the landlord's evidentiary material doesn't indicate any dates of an incident. The tenant does not believe that person would have written it, and the tenant heard from another tenant that the spouse of the Building Manager asked people to write letters, and the other tenant declined to write a letter. There is nothing factual in the shorter letter.

Hearing the landlord say that the tenant has no respect for other tenants is untrue. There are a lot of elderly people on the 3rd floor, and every person on that floor knows that the tenant will help with groceries or other things, and the tenant absolutely respects everyone. The only person who has an issue is the spouse of the Building Manager.

The tenant has also provided as evidence a letter from the ex-girlfriend of the tenant, who was deported back to Australia on or about February 18, 2022. She had a mental breakdown due to stresses in her own life. During one episode, the tenant told her she would have to leave.

The tenant loves all neighbours and there is no reason for him to move out. The tenant will continue to respect the right of quiet enjoyment to all residents, no matter what.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. The law also states that incorrect effective dates contained in a notice to end a tenancy are corrected to the nearest date that complies with the law, which I find is March 31, 2022.

In this case, the landlord's agent testified that the One Month Notice to End Tenancy for Cause was served by the Building Manager (PT) on February 16, 2022. That is not corroborated by the Proof of Service document provided for this hearing, which contains no signature of anyone who may have issued it on behalf of the landlord, and no statement by a witness to the service of the document. Further, the tenant disputes that it was served on February 16, 2022, but testified that it was served on February 18, 2022. I am not convinced that the landlord's agent has any knowledge of when or how it was served, and the Proof of Service document is not valid.

I have reviewed the complaint letters provided in the landlord's evidentiary material, the first one being from the spouse of the Building Manager which does not indicate any dates that alleged disturbances have taken place. The second part to that letter states that since the Notice was issued, the tenant has brought 3 or 4 men guests into his suite late at night, who also cause disturbances, but again no dates have been provided. It is addressed to the landlord company, not to the Building Manager, and therefore I question whether or not the Building Manager had any part in the issuance of the Notice.

The second letter of complaint provided by the landlord is dated February 9, 2022 and specifies a disturbance of extremely loud music during the day on January 22, 2022, as well as about every half hour from midnight to 6:00 a.m. going in and out and slamming the balcony door. It also specifies a disturbance of arguing and profane language by the tenant's girlfriend at 10:45 a.m. It also specifies incidents on January 26, 2022 at 7:55 a.m. and 8:05 a.m., when the writer apparently called the Building Manager telling him that the tenant was hurting his girlfriend. On January 27, 2022 "they returned at 4:30 a.m. and again going in and out balcony door..." until 6:00 a.m., very loudly.

I accept the undisputed testimony of the tenant that the tenant was out of the Country from December 26, 2021 until January 13, 2022, and contracted COVID on or about January 2, 2022 and was hospitalized toward the end of January until mid-February, 2022. It is well known that COVID has caused tremendous illness in people, and to testify that the tenant was so sick he could hardly get off the couch is believable. I accept that testimony and doubt that the tenant would be causing such disturbances while in hospital or ill at home. The letter of complaint is dated February 9, 2022, and considering that the allegations are said to have occurred on January 26 and 27, 2022, I accept the undisputed testimony of the tenant that the spouse of the Building Manager asked people to write letters of complaint, and that one resident declined to do so.

The third complaint letter provided in the landlord's evidentiary material is dated February 24, 2022 states that the writer has heard shouting and yelling from the rental unit and noise of a person wanting to be let in. Again, there is no date of when the alleged noise took place. Further, it does not state that the person was disturbed, but was prepared to call police, but it stopped.

None of the letters are sworn evidence, which is not unusual, but where they are disputed, the onus is on the landlord to establish that they are true. In this case, the landlord did not call any witnesses to disprove the tenant's testimony.

To end a tenancy for noise complaints, the landlord must establish that any interference was significant or that such disturbances were unreasonable. There is no question that the tenant's girlfriend had some sort of melt-down, and the landlord's agent apologized and empathized with the tenant during the hearing. I also accept the undisputed testimony of the tenant that the tenant's girlfriend went back to Australia on or about February 18, 2022, which is the date that the tenant testified he was served with the Notice. I think it is necessary to consider that the tenant has resided in the rental unit for almost 5 years.

In the circumstances, I am not satisfied that the landlord has established service of the One Month Notice to End Tenancy for Cause or that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. The Notice to end the tenancy is cancelled and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant may reduce rent for a future month by that amount or may enforce it by filing the order with the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated February 16, 2022 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$100.00, pursuant to Section 67 of the *Residential Tenancy Act*, and I order

that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforce.

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: June 12, 2022

Residential Tenancy Branch