



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OLC, RP, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated February 24, 2011, for an Order that the Landlord comply with the Act by making repairs and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenants admitted that they had not served the Landlords with their evidence (a 2 paged handwritten document) and as a result, I find that that evidence must be excluded pursuant to RTB Rule of Procedure 11.5(b). The Tenants also admitted that they did not submit other documentary evidence to the Landlords or to the Residential Tenancy Branch on which they were relying (ie. a witness statement). I find that this evidence is excluded for the same reasons, however the Tenants were permitted to refer to these documents at the hearing.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are repairs necessary?

Background and Evidence

This month-to-month tenancy started on June 1, 2010. On February 25, 2011, the Landlord (B.N.) served the Tenants in person with a One Month Notice to End Tenancy for Cause dated February 24, 2011. The ground stated on the Notice was that the "Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant of the property or the landlord."

The Landlords' agent said that she began receiving verbal and written complaints from the Tenant (C.J.C.) starting on July 7, 2010 regarding loud noises allegedly coming from the suite above hers in June. The Landlords' agent said the building manager spoke with the occupant of that suite however the Tenant claimed that the noise started again a day later. The Landlords' agent said the Tenant made another complaint about noise coming from suite above hers on July 19, 2010 but when the building manager investigated, he discovered that the occupants had been away since mid- to late-June 2010 on an extended holiday and the suite was empty. The Landlords' agent said she then received a written complaint from the Tenant (C.J.C.) on August 20, 2010 alleging

that the occupants of the suite below her were making an unreasonable amount of noise. The Landlords' agent said she advised the Tenant to notify the building manager about noise complaints so that he could investigate them. The Landlords' agent provided a number of incident reports regarding subsequent complaints by the Tenant (C.J.C.) who believed that the occupants of the suite above her were operating a washing machine or dryer in the late evening hours. The Landlords' agent said the building manager investigated and found no unauthorized appliances.

The Landlords' agent said the Tenant then took matters into her own hands and started approaching the occupants of the suite above and below her in the late hours of the morning accusing them of making an unreasonable amount of noise. The Landlords' agent said she received a number of written complaints from these occupants about the Tenant who said they felt that they were being "harassed." The Landlords' agent said the Tenant also reported many of these noise complaints to the building manager late at night but she refused to allow him to come to her suite to investigate and argued that the noise would stop once he came because the other occupants would know he was there. The Landlords' agent said the building manager checked the suites allegedly making noise and later spoke to other occupants in adjacent suites but he could not locate the noises complained of by this Tenant and no other occupants reported hearing any unusual noises.

The Landlords' agent said she gave the Tenants a letter on November 18, 2010 advising them that their noise complaints had been investigated by the building manager but he could find nothing to confirm those complaints. In that letter, the Landlords' agent also warned the Tenants to stop contacting the occupants in the suites above and below them with their complaints. Despite this written warning, the Landlords' agent said she received a written complaint by the occupant of the suite below the Tenants' that C.J.C. had approached him at his suite at 11:20 pm on November 22, 2010 and threatened to break his sound system and yelled obscenities at him. The Landlords' agent said the building manager also reported to her on November 23, 2010 that the Tenant (C.J.C.) had called him at 11:00 pm to report noise. The building manager gave evidence that on this occasion and others, when he offered to come to the Tenants' suite to investigate the noise, the Tenant would refuse claiming that the other occupants would stop making the noise as soon as he arrived. On November 22, 2010, the building manager said the Tenant used threatening and disrespectful language when he offered to come to her suite and then hung up the telephone on him.

The Landlords provided a substantial amount of documentary evidence regarding noise complaints made by the Tenant to the Landlords' agent and building manager and the actions taken by the Landlord to investigate them. The Landlords also provided a number of incident reports documenting complaints by other occupants of the rental property some of which regarded loud arguments by the Tenants and others which regarded the Tenant C.J.C. confronting other occupants and accusing them of making noise. On December 7, 2010, the Landlord's agent said she gave the Tenants another letter advising them of the steps the Landlords had taken to that date to investigate the

Tenants' complaints but that they were still unfounded. The Landlords also warned the Tenants in that letter that if they continued to make repeated unfounded complaints, to harass other occupants of the rental property or to disturb them with their loud fights, their tenancy could be in jeopardy.

Notwithstanding this 2nd warning letter, the Landlords' agent said she still got numerous calls from C.J.C every week about noise complaints. The Landlords' agent said in early January 2011 she took steps to investigate further the Tenants' complaints about a humming noise in the bedroom wall but could find nothing and no other occupants in adjacent suites of the rental property could hear anything unusual. Then on February 18, 2011, the Landlords' agent said she got another written complaint from the occupants of the suite above the Tenants' suite that the Tenants were banging on the floor and on their door in the early hours of the morning (when they were sleeping) complaining about noise. Consequently, on February 25, 2011, the Landlords' agent said the building manager served the Tenants with the One Month Notice to End Tenancy for Cause.

The Tenants argued that the Landlords failed to take adequate steps to address their complaints about noise. The Tenants claimed that there was a constant vibration in the walls of one of the bedroom (similar to a fish tank pump) that was more prominent in the early hours of the morning when the outside noise stopped. The Tenants claim that this noise interfered with C.J.C.'s use of the bedroom and interrupted her sleep. The Tenants said the Landlord (B.N.) only came to the rental unit on 3 occasions to investigate noise complaints and simply told them that the noise from other units was normal in a multi-residential building. The Tenants claimed that an occupant from suite #403 could also hear noise coming from the suite above the Tenants' unit that sounded like a washing machine.

The Tenants said they asked the building manager to move them to another suite but he refused to do so. The Tenants admitted that they had loud fights but said those fights were about the noise coming from other units. The Tenants also admitted that C.J.C. approached other occupants after they had been warned not to do so. The Tenants argued that they did so out of frustration because the Landlords made it clear that they had investigated the complaints and could do nothing more. The Landlord B.N., however, said there is a 3rd occupant of the rental unit who has never complained to him about noise. The building manager also claimed that the Tenant T.M.C., confided in him one day that his mother, C.J.C., was exaggerating about the noise allegedly made by other occupants. The Tenants did not dispute this evidence.

Analysis

In this matter, the Landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. Consequently, the Landlords must show that the Tenants significantly interfered with or unreasonably disturbed other occupants of the rental property or the Landlords.

I find that the Landlords have provided sufficient evidence to show that they had grounds to end the tenancy. In particular, even if I was to accept the Tenants' evidence that the Landlords failed to take adequate steps to investigate their noise complaints (and I make no such finding), I would still find that the Tenants unreasonably disturbed and significantly interfered with other occupants of the rental property by approaching them late at night and accusing them of making noise after being warned on at least 2 prior occasions not to do so. The letters of complaint submitted to the Landlords indicate that these occupants felt harassed by the actions of the Tenant, C.J.C. Furthermore, I find that the Landlord did take reasonable steps to investigate the complaints of the Tenants and that there was no evidence to substantiate those complaints. In particular, although occupants of adjacent suites were questioned about the noise, none of them appear to have heard it but instead only recalled the excessive noise coming from the Tenants' suite when they had loud fights.

The Tenants claimed that another occupant of suite #403 could corroborate their evidence that noise was coming from the suite above them, however, the Tenants were unaware of that person's full name and that person was not available to give evidence at the hearing. Consequently, I find that this evidence is hearsay and unreliable and therefore I give it little weight. The Landlords' agent also noted that this occupant said nothing to him about noise coming from that suite but rather only verbally complained to him about noise coming from a different suite below him.

For all of the above reasons, I find that there are grounds to support the One Month Notice to End Tenancy for Cause dated February 24, 2011 and the Tenants' application to cancel it is dismissed without leave to reapply. I also find that there is insufficient evidence to support the Tenant's application for repairs and it is dismissed without leave to reapply.

Conclusion

The Tenants' application is dismissed without leave to reapply. **An Order of Possession to take effect at 1:00 p.m. on March 31, 2011** has been issued to the Landlords. A copy of the Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia. 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: March 17, 2011.

Residential Tenancy Branch