



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNDC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated March 6, 2011 and for compensation for damage or loss under the Act or tenancy agreement. RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenant's application for compensation (for reimbursement of utility expenses) is unrelated to his application to cancel a Notice to End Tenancy for Cause and as a result, his application for compensation is dismissed with leave to reapply.

The Tenant's application also included the name of another person, his roommate (B.M.), as a Tenant. However, the Parties' tenancy agreement shows that only the Tenant (W.B.) is a party to that agreement. Consequently, I find that B.M. is not properly named as a party in these proceedings and the style of cause is amended by removing him.

At the beginning of the hearing, the Tenant said he had not served the Landlords with his evidence package. Consequently, I find that the Tenant's evidence package is excluded pursuant to s. 11.5(b) of the RTB Rules of Procedure however the Tenant was permitted to refer to the information contained in those documents in his oral submissions.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on December 23, 2005. The rental property is a 4-plex, one of which is occupied by the Tenant on the upper floor and by the Landlords' mother on the lower floor. A neighbouring unit also has an upper and lower suite which are rented by the same Landlords to other tenants. In approximately October of 2010, the Tenant permitted another person (B.M.) to reside in the rental unit with him. The Landlords claim that very shortly thereafter they received a number of complaints from

other occupants of the rental property that the Tenant and his roommate were making an unreasonable amount of noise and causing disturbances. Consequently, on March 6, 2011, the Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated March 6, 2011 by leaving a copy of it with his roommate at the rental unit. The grounds indicated on the Notice were as follows:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant of the rental property or the landlord;
- The Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, safety, or physical well-being of another occupant or the landlord.

The Landlords admitted that they were not relying on the second ground of the Notice because they had no evidence that the Tenant has engaged in an illegal activity. The Landlords said however, that their mother has complained frequently to them about excessive noise being made by the Tenant and his roommate. The Landlords said their mother was also concerned that the Tenant and his roommate were shooting a gun off the sundeck over the driveway where her car was parked and were throwing knives at a target on the rental property.

The Landlords' mother (N.T.) gave evidence as a witness and claimed that she started keeping track of the Tenant's noise disturbances and she provided pages of notes of them. In particular, N.T. claimed that the Tenant made a lot of noise especially when he had visitors and that she could hear a chopping noise and smell peculiar smells. Consequently, N.T. said she believes the Tenant is using drugs. N.T. also claimed that the Tenant harasses her by watching her coming and going from the rental property, by treating her disrespectfully and by eavesdropping on her telephone conversations.

The Tenant claimed that he does not make an unreasonable amount of noise and that the problem instead is that the property is not sound proofed. The Tenant said he can also hear the Landlords' mother clearly (especially late at night) reading out loud, talking to visitors, banging doors and listening to the television. The Tenant said he is aware that the Landlords' mother has a brain injury and that she is easily irritated so he ensures that his music is turned down and that he doesn't use his heavy bag when she is home. The Tenant denied that he does drugs and said the odd smell referred to by N.T. was probably lighter fluid for the barbeque. The Tenant also denied that he eavesdrops on N.T. or spies on her. The Tenant admitted that he shoots a pellet gun off of the sun deck but claims he only does so when N.T. is not home. The Tenant also admitted that he throws knives at a target but claimed it is far away from the rental unit.

The Landlords also provided written statements from two occupants of the neighbouring units who claimed that the Tenant was noisy late at night and on at least one occasion was involved in a fight for which the police were called. One of the deponents also claimed that the Tenant threatened him on two occasions, had a noisy muffler that

disturbed him early in the morning and that the police attended the rental property “more than 2 dozen times.” Neither of these tenants attended the hearing to give evidence.

The Tenant argued that it was these 2 other occupants that made excessive noise. The Tenant agreed that the police were called to the rental property on one occasion however he said it was to break up a physical fight that erupted between these two occupants. The Tenant denied threatening one of these occupants and claimed that this person came to his door on two occasions and accused him of smoking inside. The Tenant said he advised this person on both occasions that he wasn't smoking inside and on the second occasion yelled at him to go away and shut the door on him. The Tenant denied not cleaning up after his dog and argued that other occupants of the rental property also have dogs that use the common areas.

The Landlords said they spoke to the Tenant about noise complaints in December 2010 but they continued to receive further complaints from the other occupants of the rental property. One of the Landlords also claimed that on one occasion while visiting his mother at her suite he could hear sounds coming from the Tenant's suite. This Landlord admitted that he did not talk to the Tenant about it. The Landlords admitted that they never told the Tenant that if he did not stop bothering the other occupants with excessive noise that his tenancy could be terminated. The Tenant said the only time the Landlords advised him about a noise complaint was prior to December 2010 when they mentioned the noise he made from kicking his heavy bag. The Tenant said one of the Landlords then approached him in December 2010 to see if he would move next door but the Tenant said he did not want to do so.

The Tenant argued that the real reason that the Landlords served him with the One Month Notice was because they were upset with him for not keeping a gas bill in his name. The Tenant said when he moved into the rental property, the Landlords told him they were going to convert the basement of his unit (and other units in the 4-plex) into rental suites. The Tenant said the Landlords asked him to pay for the gas for both his and the lower (ie. their mother's) suite until the renovations were done but once they were done the Landlords refused to put the gas bill in their names (and told the Tenant they would not raise the rent in return). Consequently, the Tenant said he paid for the gas for both suites for a number of years but kept telling the Landlords he was not happy with this arrangement and finally on December 1, 2010, he closed his gas account.

The Tenant said one of the Landlords approached him in December 2010 and asked him to put the gas bill back in his name because they did not want to pay a connection fee or a deposit. The Tenant said the Landlords also approached him in the following months about putting the bill back in his name but he refused. The Tenant said he believes the Landlords were finally given a disconnection notice in late February 2011 and shortly thereafter, the Tenant said he received the One Month Notice to End Tenancy. The Landlords deny this allegation and argue instead that the Tenant was given the One Month Notice as a result of the noise complaints.

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. This means that if the Landlords' evidence is contradicted by the Tenant, the Landlords will need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlords claim that since approximately October 2010, the Tenant and his roommate have made an unreasonable amount of noise and thereby disturbed other occupants of the rental property. The Landlords relied on the witness statements of 2 neighboring tenants who claimed the Tenant was generally noisy, alleged he was involved in an incident where the police had to be called and alleged he made threats. The Tenant and his roommate denied these allegations and claim instead that the police had to attend the rental property when these 2 complainants got into a fight late one evening during a loud party. Given the contradictory evidence of the Tenant and his roommate regarding these allegations and given that these other occupants were unavailable to give evidence at the hearing and to be cross-examined on their statements, I find that the statements are hearsay and I give them little weight.

The Landlords also relied on the evidence of their mother (N.T.) who resides in the suite below the Tenant. N.T. said she has complained to the Landlords on many occasions about noise and other disturbances made by the Tenant and she made a list of those events. Many of the incidences concerning noise described in this witness' notes however refer to dates after March 6, 2011. Given that the One Month Notice was served on March 6, 2011, incidences occurring after that date cannot be considered as grounds for issuing the One Month Notice dated March 6, 2011 and as a result, I find they are irrelevant in this hearing. This witnesses' notes also refer to verbal complaints allegedly made by former tenants to the Landlords, however this is hearsay and unreliable. This witness also admitted in her oral evidence that she did not know if the Tenant was using drugs but rather speculated that this was the case based on suspicious noises she could hear and odd odors she could smell.

The Tenant and his roommate also disputed the evidence of N.T. and claimed that they did not make an unreasonable amount of noise but rather the problem was a lack of sound proofing between the floors and walls of the rental units. The Tenant noted that he too was disturbed late at night by sounds made by N.T. in her suite. The Tenant claimed that the Landlords only approached him on one occasion during his whole tenancy about noise (prior to December 2010) which the Landlords did not deny. Consequently, the Tenant argued that the real reason the Landlords wanted to end the tenancy was because he refused to continue to pay the gas bill on their behalf.

Given the contradictory evidence of the Parties and in the absence of any additional, corroborating or other reliable evidence from the Landlords, I find that there is

insufficient evidence to support the grounds set out on the One Month Notice to End Tenancy for Cause dated March 6, 2011 and it is cancelled.

Conclusion

The Tenant's application is granted. The One Month Notice to End Tenancy for Cause dated March 6, 2011 and it is cancelled and the tenancy will continue. 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: April 06, 2011.

Residential Tenancy Branch