Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee.

The parties and the landlord's witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I note that after affirmation, each witness exited the telephone conference until the witness testified. After testifying, each witness was allowed to remain in the telephone conference.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

Background and Evidence

This one year, fixed term tenancy started on November 1, 2010, monthly rent is $2,100.00 and the tenant paid a security deposit of $1,050.00 at the beginning of the tenancy.

The rental unit is one of approximately 90 units in a 2-3 year old strata building, the building has 12 levels and the tenant's rental unit is on the 12th floor.

These parties were in prior dispute resolution in which the tenant sought to cancel a 1 Month Notice to End Tenancy, resulting in a Decision by another Dispute Resolution Officer (DRO) issued on March 25, 2011.

The Decision ruled in favour of the tenant's application and cancelled that 1 Month Notice to End Tenancy for Cause. In part, the Decision stated "...I accept the tenant's position in combination with the absence of any documented written warnings from the landlord that the landlord failed to provide adequate warnings of the consequences of any noise disturbances."

Due to the Decision of March 25, 2011, the parties were informed that I would not consider any testimony or evidence which occurred or referred to events dated prior to March 25, 2011.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified as to why the tenant had been served a 1 Month Notice to End Tenancy for Cause.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the tenant on June 27, 2011, via posting on the door, with a stated effective vacancy date of July 31, 2011. Section 90 of the Residential Tenancy Act (the "Act") states that documents delivered in this manner are deemed served three days later.

The cause as stated on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

In support of the Notice, the landlord's agent, who is the property manager, testified that since the prior Decision, the strata corporation has generated a number of fines to the owners of the rental unit, due to noise bylaw violations by the tenant. The property manager, in turn, generated letters notifying the tenant of the violation and the fine and attaching a letter from the strata corporation.

One such letter was dated April 5, 2011, which referred to a noise bylaw infraction on March 27, 2011.

Another letter to the tenant from the property manager was dated June 14, 2011, which referred to noise bylaw violations on April 24th and May 15th, 2011

Lastly, another letter to the tenant from the property manager was dated June 23, 2011, which referred to a noise bylaw violation on June 7, 2011.

These letters were entered into evidence by the landlord.

The agent also stated that the tenant has caused a total of $750.00 in fines since the prior hearing.

The landlord's witness, DG, who is also the strata corporation president, testified as to the process of investigating a complaint regarding a unit within the building, which would cause a fine letter to be issued. The witness stated that after receiving a complaint, the complaint is investigated with other sources to corroborate the incident.

According to the witness, once an incident is satisfactorily corroborated, a letter is issued to the alleged offender. The letter may be a warning letter, but if the alleged infraction has resulted in a previous fine, than the practice is to issue another fine letter due to the recurring problem.

The witness stated the complaint has to be justified and in the case of a noise complaint, the noise has to be at unreasonable levels and times.

Residents are also invited to call the police by law enforcement rather than the strata corporation if the noise is at unacceptable levels.

Witness TS, stated that his residential unit adjoins the rental unit and that he, along with the residents on the opposite adjoining side, would be the only residents who would be affected by the tenant's alleged noise.

The witness stated that he made several complaints to the strata regarding the tenant's excessive noise, the first significant occurrence of such was the weekend following the prior Decision. The tenant, according to the witness, had a loud party carrying onto the early morning hours.

The witness explained that his bedroom is adjacent to the tenant's deck, which has a hot tub. The hot tub is the source of a large number of the noise complaints.

The witness documented that he was directly affected by at least 12 incidents of excessive noise from the tenant since the prior Decision, even though he has lived there only part time since the previous Decision. The incessant excessive noise caused the witness to rent temporary accommodations in another location as he was not able to function in his high stress job due to sleep deprivation.

The witness described the noise from the tenant's rental unit as excessive bass from the sound system, loud partying and loud voices and has been repeated since the previous Decision.

The witness stated that he has spoken to the tenant and left several notes voicing his concern about excessive noise, but has not made the attempt since the prior Decision.

Witness TL stated that his residential unit is on the other adjoining side of the tenant's rental unit and described the loud party on the weekend following the prior Decision. The witness characterized the party as major, with loud bass music, someone pounding on his door at 3:00 a.m., door slamming, and voices.

This party, according to the witness went on until at least 6:00 a.m. the next morning, and further, he stated he emailed the then strata corporation president to come around to hear the noise. The president verified the excessive noise, which resulted in a fine letter of March 28, 2011, to the owner of the rental unit. I note that this letter, along with a letter to the tenant dated April 5, 2011, from the property manager regarding the fine letter, were entered into evidence.

The witness further submitted that the tenant has awakened him during the middle of the night at least once a week since the prior Decision, due to partying and 3-4 people being in the hot tub and talking loudly.

The witness stated that the excessive noise coming from the tenant's rental unit late at night has caused him and his wife to become sleep deprived, which interferes with their high stress jobs.

Witness GT, a strata corporation board member, stated that the tenant's excessive noise has now resulted in five fines, since the prior hearing, with the 5th one from a June 27, 2011, incident. He also explained that a complaint is investigated and corroborated, but that an ongoing issue results in a fine letter, rather than a warning letter.

The witness stated that the noise coming from the tenant's rental unit is an ongoing issue and that the noise is screaming, shouting, bass music and slamming doors at all hours of the day and night.

The witness stated that the tenant has an absolute disregard for his neighbour's quiet enjoyment and that the strata have not received any response from the tenant regarding the noise complaints made against him.

In response to the landlord's submissions, the tenant stated he was not aware that there were any complaints made against him regarding alleged excessive noise as he did not receive the property manager's letter, dated June 14, 2011, until June 28, 2011, one day after receiving the Notice.

The tenant submitted that this was the first time since the prior hearing he had been contacted by the landlord's agent and thus, the reason why he had not responded.

The tenant stated that there is no insulation between the walls, which he discovered when hanging a light; the residential units were separated only by drywall. Further the tenant denied making any excessive noise and that any problems stemmed from the composition of the building itself, which makes noise transferrable.

The tenant denied loud partying and making excessive noises.

The tenant stated that the first time he was aware there were any noise complaints was the day he received the Notice, June 27, 2011.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Once the tenant made an Application to dispute the Notice, the burden of proof is on the landlord to prove the cause listed on the Notice, in this case that the tenant significantly

interfered with or unreasonably disturbed another occupant of the residential property or the landlord.

Section 47 of the Act provides that a landlord may issue a Notice to End Tenancy for Cause where the tenant, or a person permitted on the property, has significantly interfered with or unreasonably disturbed another occupant of the residential property.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant significantly interfered with and unreasonably disturbed another occupant of the residential property.

In reaching this conclusion I find the landlord's witnesses provided credible testimony such that I find that on a balance of probabilities the behaviour of the tenant, which created the noise complaints in the first place, has continued unabated since the previous Decision. I was particularly influenced by the compelling testimony of witness TS and witness TL that the tenant, two days after receiving a successful Decision in a dispute resolution hearing, had a party in his rental unit which lasted until at 7:00 a.m. the following day. I accept this testimony and I find this behaviour displays complete disregard by the tenant for the other occupants' quiet enjoyment and the dispute resolution process.

I was further influenced by witness TS' testimony that he was forced to rent a separate accommodation in order to have undisturbed sleep for his work week due to the continuing partying, loud bass music, shouting and door slamming. I find the testimony of witness TL supports this testimony and I accept both witness' testimony.

While I accept the tenant's testimony that he received no further written warnings of noise complaints prior to receiving the June 27, 2011, Notice to End Tenancy, I find the Act does not require the landlord to submit written warnings or letters to a tenant prior to issuing a Notice to End Tenancy for this Cause in order for it to be effective.

Having said that, I find that the tenant received sufficient warning when he received an earlier Notice to End Tenancy, despite the successful Decision in his favour, and that the evidence shows he was unwilling to alter his pattern of behaviour afterwards. I further find a final warning would be ineffective and I find the evidence supports that this tenancy should end for the cause listed on the Notice.

I therefore **dismiss** the tenant's application, without leave to reapply.

As I have dismissed the tenant's application, I decline to award him the filing fee.

Under Section 55 of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession. However, the landlord at the hearing did not make a specific oral request for an order of possession. I therefore have not granted an order of possession in favour of the landlord.

The landlord is at liberty to make their own application for an order of possession.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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: August 04, 2011.

Residential Tenancy Branch