Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction
This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male landlord (the landlord) testified that he sent the tenant the 1 Month Notice by registered mail and posted it on the tenant's door on April 11. 2012. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed that she received the landlord's 1 Month Notice posted on her door. The landlord confirmed that on April 23, 2011, he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 20, 2012. I am satisfied that both parties served the above documents and their written evidence packages in accordance with the *Act*.

The landlord made an oral request for an end to the tenancy on the basis of the 1 Month Notice and an Order of Possession if the tenant's application were dismissed.

Issues(s) to be Decided
Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence
This periodic tenancy commenced on June 1, 2011. Monthly rent in this subsidized rental unit in a rental building is set at $832.00, of which the tenant pays $542.00. The landlord holds a $419.00 security deposit for this tenancy paid on May 31, 2011.

The landlord entered into written evidence a copy of the 1 Month Notice requesting an end to the tenancy by May 31, 2012. In that Notice, the landlord cited the following reason for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

At the hearing, the landlord confirmed that much of the landlord's request for an end to this tenancy resulted from a lengthy and ongoing dispute between two sets of tenants, this tenant and the tenant couple who acted as the landlord's witnesses in this hearing (the landlord's witnesses). Two days earlier, I heard a similar application from the landlord in which the landlord sought an Order of Possession and an end to the tenancy of the landlord's witnesses. Since the landlord's witnesses did not attend that hearing, the landlord was issued the requested Order of Possession. In that application, the landlord's primary witness and written statements were provided by the tenant in the current hearing. Both tenants applied for dispute resolution to cancel the landlord's 1 Month Notices issued to both of them for significantly interfering with and unreasonably disturbing other tenants in the rental building, primarily one another. The landlord's main source of evidence in support of each 1 Month Notice was written evidence from the other tenant in this dispute.

As discussed in the consideration of both hearings and in rejecting the landlord's request that the applications be joined in one hearing, I can only consider the merits of each application individually. Both applications succeed or fail based on the oral and written evidence presented by the parties in support of the landlord's 1 Month Notice issued to both sets of tenants. To the landlord's credit, the landlord did explore the option of hiring an outside mediator to attempt to resolve the escalating conflict between the parties without resorting to the issuance of 1 Month Notices. Although the landlord's witnesses agreed to the landlord's proposed mediation initiative, the tenant rejected this proposal. The landlord resorted to issuing 1 Month Notices to both tenants. Despite having obtained an Order of Possession against the landlord's witnesses in this hearing, the landlord confirmed that the Society that operates this subsidized rental building was still seeking an Order of Possession against the tenant.

In this case, the landlord submitted a number of letters of complaint from the landlord's witnesses and the tenant about one another. Both blame one another for a host of problems that have arisen. Many of the landlord's witnesses' letters and one letter issued by another tenant in the building who has since vacated the premises were directed at the loudness of the music played by the tenant in her rental unit. After receiving letters of complaint about the tenant's loud music, the landlord issued a January 19, 2012 letter to the tenant advising her that she risked eviction on the basis of her breach of the provision in her rental agreement preventing her from "excessive noise" in the rental unit. In the letter, the landlord warned that "should you continue to listen to loud music that disturbs your neighbors the Society may issue you a one month notice for material breach and/or for unreasonable disturbance."

As was the apparent pattern for these two tenancies, shortly after receiving the landlord's warning letter, the tenant responded with a January 20, 2012 letter denying the other tenant's (the landlord's witnesses') allegation and directing her own series of complaints against the other tenants. This resulted in a similar warning letter being sent by the landlord to the landlord's witnesses with respect to the written complaint received from the tenant.

Rather than provide a full chronicle of the repeated set of written complaints lodged by the two sets of tenants against one another, I take particular note of the landlord's March 9, 2012 letter to the tenant. In that letter, the landlord noted the following:

> *...I had previously confirmed with you that your neighbors did inform me that the volume of your music has been turned down. Thank you for this response to this Society request.*
>
> *Thank you also for confirming that your neighbor has stopped banging on the common wall separating your residences in response to the Society request...*

At the hearing, the landlord confirmed the tenant's claim that the issues regarding the tenant's playing of loud music have been rectified. The landlord testified that the 1 Month Notice was not issued for the tenant's playing of loud music, an issue identified by the landlord's witnesses in many of their letters of complaint about the tenant. Rather, the landlord testified that the sole reason for issuing the 1 Month Notice related to the tenant's alleged lack of compliance with the landlord's March 9, 2012 warning letter issued to the tenant about "Unapproved Use of Profanity." In that letter, the landlord stated the following:

> *...As discussed the Society has received written complaint indicating that on March 1st, 2012 at approximately 7:30 p.m., you used loud profanity toward another tenant while you were on the outside deck of our unit.*
>
> *Whether inside or outside of your residence, the use of profanity that can be heard by tenants on common area of the property, is not approved. Should you or your guests continue to unreasonably disturb other tenants or their guests in this manner, or engage in this type of behavior at any time in the future, the Society shall issue you a one month notice to end tenancy...*

At the hearing, the landlord's witnesses confirmed information in their written complaint letters to the effect that the tenant did, in fact, swear at them from her deck after receiving the landlord's March 9, 2012 letter. The male witness testified that the tenant has used profane language on numerous occasions and has been yelling and swearing at his wife, the female witness, outside her window. In her sworn testimony, the female witness said that the tenant has been very loud in her use of profane language. She gave a graphic example of the language used on these occasions.

The tenant's advocate asked if the witnesses could supply dates and times for any of these alleged incidents. The witnesses could not supply dates or times but said that they occurred after January 2012. They said that, unlike the tenant, they chose not to involve the police in their complaints. For her part, the tenant gave sworn testimony that she had "never done any of these things" and that she had never yelled profanities at the female witness.

The tenant had two witnesses available who she said were willing to give sworn testimony that they have not been significantly interfered with or unreasonably disturbed by the tenant. These tenants both live in rental units on the same level as the tenant. One lives two units away from the tenant. At the hearing, the landlord testified that the 1 Month Notice was issued to the tenant because the tenant had significantly interfered with or unreasonably disturbed the landlord's witnesses at this hearing (i.e., the other couple in this dispute) and not anyone else in this rental building. As such, he said that he would accept the tenant's assertion that her two witnesses would give sworn testimony that the tenant's behaviours and actions have not significantly interfered with or unreasonably disturbed them. Since the landlord said that he would have no objections to the anticipated testimony of the tenant's witnesses, both parties agreed that there was no need for the tenant's witnesses to participate in this hearing. The landlord agreed that I could take into consideration that two nearby neighbours were willing to testify at this hearing that they were not significantly interfered with or unreasonably disturbed by the tenant or by her alleged use of loud profane language audible in the rental building.

Analysis

In an application for an end to tenancy for cause, the onus is on the landlord to demonstrate that the tenant's behaviour warrants an end to the tenancy and the issuance of an Order of Possession.

Although both of the tenants have issued complaints and counter-complaints about one another, I find that the crux of the landlord's request for an end to this tenancy narrows to the alleged use of loud profanity directed towards the landlord's witnesses, the other couple in this dispute. By the landlord's oral and written admission, the tenant has addressed the concerns about the playing of loud music by the tenant. While the ongoing dispute between the two tenants has no doubt contributed to the landlord's frustration with this situation, eventually leading to the landlord's attempt to evict both tenants, by April 11, 2012, the only issue cited by the landlord to justify the issuance of the landlord's 1 Month Notice was the claim that the tenant was using loud profanity against the landlord's witnesses.

The landlord testified that no employee of the landlord's witnessed any of the alleged loud profanities uttered by the tenant. The landlord stated that the Society operating this rental building is very concerned about the use of profane language in a building where there are often young families. However, the landlord's sole witnesses to these alleged incidents were the couple who attended the hearing as the landlord's witnesses.

In considering this situation, I have taken into account the heated nature of the letters of complaints from both sets of tenants and the willingness of both sets of tenants to testify against one another to support the landlord's attempt to evict the other tenant(s) in this dispute. I am not convinced that the landlord has sufficiently demonstrated entitlement to end this tenancy based solely on the word of the other party in this dispute, two tenants who were themselves subject to complaints leading to the landlord's simultaneous issuance of a 1 Month Notice to end their tenancy. In the absence of any other witnesses to these alleged incidents, I find that the landlord's case for ending this tenancy based on the tenant's alleged use of loud profanity unusually weak and ill-conceived, based as it is solely on the disputed oral and written evidence of the landlord's witnesses. For these reasons, I allow the tenant's application to cancel the 1 Month Notice with the effect that this tenancy continues.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues.

Since the 1 Month Notice is cancelled, there is no need to consider the landlord's oral request for an Order of Possession.

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: May 14, 2012

Residential Tenancy Branch