



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNC, FF

For the landlord – OPC, MND, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel the Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application. The landlord applied an Order of Possession for cause; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy set aside?
- If not is the landlord entitled to an Order of Possession for cause?

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The parties agree that this tenancy started on November 01, 2011. This was a fixed term tenancy for a year and has since reverted to a month to month tenancy. The rent for this unit is now \$1,050.00 per month plus 45.00 for parking.

The landlord's agent (JR) testifies that the tenant was given a verbal warning about noise from her unit when a party was held sometime around the end of August, beginning of September, 2012. One of the landlord's agents (LL) knocked on the tenant's door to ask the tenant to stop the noise and the tenant became abusive and did not comply with that verbal request. The tenant had another party in November, 2012 and was issued with a compliance notice due to the noise levels and the disturbances to other tenants and the landlord's agent who resides next door. The tenant was warned that any further parties or disturbances may result in an eviction.

The landlord's agent testifies that the tenancy agreement has a clause which informs the tenant that there must be no loud music or partying after 11.00 p.m. The landlord's agent testifies that on June 15, 2013 the tenant had another party in her unit which went on until 3.00 a.m. and disturbed the landlord's agent and the tenant living in the unit above. The landlord's agent testifies that the other agent yelled at one of the tenant's guests on the balcony from her window and asked them to quiet down however the tenant and her guests did not comply. The landlord's agent testifies that the smoke from marijuana has also risen from the tenants unit to the unit above. The landlord has provided a complaint letter from the landlord's agent (LL) and the tenant living above.

Due to these continued disturbances and the smoking of marijuana the landlord served the tenant with a One Month Notice to End Tenancy for cause. This Notice was served

upon the tenant in person on June 18, 2013 and has an effective date of July 31, 2013. The Notice provides the following reasons to end the tenancy:

1) the tenant or a person permitted on the residential property by the tenant has

(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has

(ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord seeks an Order of Possession effective as soon as possible as the effective date of the Notice is today's date.

The landlord testifies that after the last party held in the tenants unit the landlord's agent and the cleaner found vomit and or urine in the elevator early the next morning. The landlord testifies that resulted in the elevator carpet having to be cleaned at a cost of \$94.50. The landlord has provided an invoice from the cleaner in evidence and seeks to recover this cost from the tenant.

The tenant disputes the landlord's claims. The tenant agrees that she had a party in November, 2012 and received a written compliance letter from the landlord. The tenant also agrees that she had around eight work colleagues over for dinner on the night of June 15, 2013. They finished dinner and then watched a movie. The tenant testifies that the movie may have been a little loud but they were not having a party. The tenant testifies that she has written a letter of apology to the landlord for the noise. The tenant agrees that her guests left around 3.00 a.m. and testifies that she escorted them down

the elevator to get cabs at the front of the building. The tenant disputes that any of her guests vomited or urinated in the elevator but testifies she did notice this in the elevator in the morning. The tenant testifies that there were two other parties being held that same night in the building and the landlord cannot hold the tenant responsible for this cleaning.

The tenant testifies that she works for Corrections Canada as do all the guests in attendance that evening. The tenant testifies that due to their work none of them carry or smoke marijuana. The tenant testifies that she received no complaints about any noise on June 15, 2013. The tenant seeks to have the Notice set aside.

The landlord testifies that if there were two other units holding a party on the night of June 15, 2013 the landlord received no complaints about noise from those parties. The landlord's agent testifies that they are not saying that the tenant has been smoking marijuana but the tenant's guests were on the tenants balcony smoking this substance and the smoke went upstairs to the tenants unit above.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has 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 landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided documentation showing that the tenant was previously warned about noise late at night from her unit. The tenant herself agrees she had friends over on the night of June 15, 2013 but denies there was a party.

I have reviewed the testimony and evidence before me and am satisfied that the landlord has met the burden of proof that the tenant caused disturbances to other tenants and the landlords agent in November, 2012 and then again on June 15, 2013

despite having been warned by the landlords agent and despite the clause in the tenancy agreement that states that there must be no noise after 11.00 p.m. A landlord has a responsibility to protect the covenant of quiet enjoyment for all tenants and if one tenant disturbs another tenant then the landlord must take reasonable steps to protect the other tenants rights.

Consequently, I uphold the One Month Notice to End Tenancy and issue an Order of Possession to the landlord. As the Notice had an effective date of July 31, 2013 and that date has now passed the effective date of the Order of Possession will be for two days after service upon the tenant.

With regard to the landlords claim for cleaning the carpet in the elevator; as explained to the parties during the hearing, the burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I have no evidence before me that the tenant or the tenant's guests were responsible for the vomit or urine in the elevator and therefore I find the landlord has not met the burden of proof. This section of the landlords claim is therefore dismissed.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the Act.

As the tenants application to set aside the Notice has been denied the tenant must bear the cost of filing her own application

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

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: July 31, 2013

Residential Tenancy Branch