Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KRAMER HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated December 31, 2013, a copy of which was submitted into evidence. The Notice indicated that the reasons for terminating the tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and breached a material term.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Should the Notice be cancelled on the basis that the evidence does not support any one of the causes shown?

Background and Evidence

The tenancy began in December 2009 and the rent is $575.00.

The landlord testified that the park is for seniors over 55. The landlord testified that incidents occurred in which other residents lodged complaints about the volume of the tenant's TV or stereo coming from inside his own manufactured home. According to the landlord, being able to hear the tenant's music has been a chronic problem but the tenant has refused to cease disturbing others and reacts negatively when complaints are made.

The landlord submitted a significant amount of evidence consisting of complaint letters and a written letter of warning to the tenant.

The landlord pointed out that many of the residents hesitate to complain due to fears of reprisal. The written complaints in evidence came from two different nearby residents.

One neighbor reported being disturbed by the tenant's music even in the daytime and wrote to the landlord on December 9, 2013 about an incident that occurred after she had asked the tenant to turn down his stereo. According to the letter, the tenant did turn down the music in response to the request, but later came onto the neighbour's property yelling insults at her through her door, at which time he appeared to be intoxicated. Police were called and attended. No charges were laid.

The landlord testified that when they attempted to discuss noise complaints, or any other issue, with the applicant tenant, he has become agitated and combative. After one such incident, the tenant made repeated calls to the landlord leaving hostile messages that the landlord feels constitute threats.

The landlord supplied transcripts of messages left by the tenant on December 7, 2013 and December 9, 2013. One of the transcripts included mild profanity in referring to the other resident who complained. Two of the messages were apologetic explaining that his outburst in speaking with the landlord was a result of his medical condition.

On December 7, 2013, the tenant also dropped off a letter in the mail slot denying that his TV or stereo volume was too loud.

The landlord testified that the tenant was sent a warning letter from the landlord dated December 16, 2013, about the volume of his stereo, his conduct and other violations in the past. A copy of the letter is in evidence and is excerpted below:

> *"You were called on Saturday, Dec 7th with a request to turn the volume of your stereo down, as it was loud enough to disturb your neighbours.*
>
> *Instead of simply complying with the request, you chose to act in an irrational and objectionable way by yelling and making harassing phone calls to my residence and office.*
>
> *Last May, when the Park contacted you with a question of a non-registered person living with you, you acted in a similar manner. You eventually apologized and indicated that it would not happen again.*
>
> *The Park has been very tolerant of your behavior to date. Your actions not only break Park rules, but are also a violation of the Residential Tenancy Act.*

If there are any further disturbances such as these or breaking of the Park rules, rental agreement or Residential Tenancy Act, the Park will immediately escalate the matter up to and including eviction"

After the landlord issued the warning letter, the neighbor who initially sent the December 7, 2013 complaint letter began to monitor the tenant and kept a log noting whether noise was emanating from the tenant's manufactured home by date. This written chronology was submitted into evidence. The monitoring of the tenant was apparently initiated by the resident at the landlord's suggestion and contained the following notations:

"*As per your request on our last telephone conversation I have been jotting down dates when (B's) stereo is excessively loud.*

Dec 17 - Music till 11:00 pm

18 - Started at 6am – I worked till about 12pm – don't know when it stopped

21 - Went on til 1:30am

24 - Christmas Eve 7:00am – 11:45pm

25 - Christmas Day – 530am – mid morning – He was loaded so figure he just passed out.

27 - Starts at 6:50am

28 – Sporadic most of the day.

Now I leave my TV on all day to drown out the noise and run the dishwasher which I only used to put on as I was leaving for work. I sleep on my couch with the TV going instead of my bed when he keeps the volume up after 9:00pm…..(D) has asked him to please turn it down, I'm sure she has told you about his response in her own letter. I'd ask him myself but I'm afraid he'd blow up in my face like he did on my porch when (the Park Manager)said someone had complained the last time.

I don't see why I should have to live within 100 ft of a man who is unstable, volatile, and frankly scares me as I don't know when he is going to explode next. I'm just waiting for it to happen again, It doesn't go away with someone of his nature, only escalates. He seems to be looking for a confrontation of some sort, as he is deliberately keeping his stereo loud, knowing he is annoying his neighbours". (Reproduced as written)

The individual above also kept a subsequent chronology monitoring the tenant's "*noisey days*" (Reproduced as written), during the month of January 2014, submitted into evidence.

A second adjacent renter had sent a letter of complaint to the landlord dated December 27, 2013, excerpted below:

> "*Our neighbor (Applicant Tenant) has no consideration for his neighbours. I tried to talk to him about the loud TV and Stereo and the fact that we could hear it early in the morning. He told me he has sought legal advice and that he can make noise during the daylight hours. (Municipal) bylaws rule over park rules? The one thing he mentioned twice is that due to his brain injury he is very volatile and that he doesn't know what he would do if someone should knock on his door. (He) has suggested that I should tell everyone who I know might be complaining about his stereo or TV that they should call the police and not confront him…….When I approached him in a calm and considerate manner, I expected a different response than 'Call the police'…….We've also tried to be tolerant of the noise, since we live in such close proximity next door.*" (Reproduced as written)

The tenant acknowledged that, because of a hearing deficiency, he does turn the TV up to a louder volume than most people, in the privacy of his manufactured home. The tenant provided medical data to support that he has a hearing impairment. However, the tenant stated that the higher volume was not set to intentionally bother his neighbours. The tenant does not feel that the alleged "excessive" noise level would constitute an *unreasonable* disturbance under the Act or the contract, particularly in the daytime.

The tenant stated that he will start using headphones in the future to minimize the noise. The tenant's rehabilitation case manager made a commitment to assist the tenant in obtaining wireless headphones.

With respect to the tenant's aggressive reaction to complaints, the tenant pointed out that the nature of his brain injury affects his ability to maintain composure under stress. The tenant explained that he has been undergoing a substantial amount of personal stress, aside from the problems he has been having with his landlord and his neighbours. The tenant testified that he regretted making the repeated phone calls to the landlord and regretted yelling at his neighbor. However, the tenant maintained that at no time did he ever threaten them with harm.

The tenant had submitted a letter from a rehabilitation service stating that, over the past 8 years, the tenant has made a remarkable recovery from a life threatening accident and, although his remaining disability may cause him to become loud and impulsive and occasionally foul-mouthed, he is a very kind caring individual.

In evidence is a letter from the tenant's case manager listing the tenant's medical challenges and emphasizing that it is, "*of maximal importance that we support his ongoing independent functioning*".

Analysis

Burden of Proof: The burden of proof is on the landlord to show the notice was justified under the Act.

In regard to the cause put forth as warranting termination of the tenancy under section 40(1)(d)(i) o the Act, I find that the landlord must prove that the tenant or associate of the tenant significantly interfered with or unreasonably disturbed others.

I find that the testimony from both parties confirmed that an incident on December 7, 2013 did occur.

In regard to the allegation of excessive noise, I accept that the tenant's neighbours did hear audible sounds coming from the tenant's TV and/or sound surround system and that this had the effect of genuinely disturbing them.

However, the threshold that must be proven under section 40(1)(c) of the Act is that the tenant actions of the tenant have "***significantly*** interfered with or **unreasonably** disturbed" another occupant or the landlord.

I find that section 22 (b) of the Act provides that residents are entitled to quiet enjoyment including freedom from unreasonable disturbance. However, this does not mean that every tenant is required to maintain absolute silence beyond the physical perimeters of their dwellings. Both parties testified that the tenant has never been charged nor cautioned by police for excessive bothersome noise.

On the other hand, each tenant does have a basic obligation to ensure that their activities do not *significantly* interfere with nor *unreasonably* disturb other occupants. I note that the perception of what level of noise constitutes "reasonable" can be influenced by the sensitivity of a particular individual. It is a subjective assessment.

I find that, if the complaint is based on a resident merely being able to hear sounds involved in normal living, these are unlikely to be considered as an unreasonable disturbance, particularly during daylight hours. The noise would need to go beyond merely being audible, but must be loud enough to significantly intrude as an actual disturbance, not just an annoyance.

That being said, each tenant does have an obligation to ensure that every reasonable precaution is taken to avoid bothering others, erring on the side of safety. In the case of a person who has a hearing impairment, this may present more of a challenge.

In any case, if the landlord intends to sanction a tenant for excessive noise, it is incumbent upon the landlord to investigate and quantify the sound to prove that it genuinely qualifies as an unreasonable disturbance under the Act and not just base the Notice on subjective complaints.

I find that the right of the applicant tenant under section 22 must also be protected. He too is entitled to the enjoyment of his home including, but not limited to, rights to the following:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the manufactured home site subject only to the landlord's right to enter the site in accordance with section 23 of the Act;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept that the tenant was not intentionally disturbing others but was going about his normal daily lifestyle as he chose to do. I find that, due to his medical conditions the tenant is forced to deal with more barriers and challenges than other people have to face. I find that, although the tenant's practice of listening to his media at an elevated volume results in it being audibly perceptible by others, he is still using his home for a reasonable and lawful purpose.

I find evidence submitted by the landlord shows the Park Rules restrict loud parties and excessive noise between the hours of 11:00 p.m. and 8:00 a.m. There is no definition of the meaning of "*excessive*" in the Park Rules. However, I find the fact a sound can be distinctly heard by others nearby, does not automatically make it "*excessive"* noise.

All parties agree that the tenant's media is audible beyond the tenant's manufactured home. However, I find that the landlord has not sufficiently met its burden of proof to show that the tenant exceeded the noise threshold under the Act by significantly interfering with or unreasonably disturbing others.

In any case, the tenant has made a commitment use headphones in future to listen to his TV or sound surround system to ensure that detectable sounds emanating from his manufactured home are minimized.

In regard to the landlord's allegation that the tenant had also violated a park rule by having an "unregistered guest", I find that the landlord's requirement that a tenant must obtain permission from the Park for any visitors staying longer than one week to be contrary to sections 22 and 24 of the Act. I find that a Park Rule restricting a tenant's

guests or requiring personal information about a tenant's visitors, is not enforceable under the Act.

With respect to the second reason given on the One Month Notice to End Tenancy for Cause , that is that the tenant, "*Breach of a material term of the tenancy agreement*", I find that insufficient evidence was presented that would support this allegation.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is inadequately supported by evidence, and must be cancelled.

In cancelling this Notice, I order the parties to restrict all communication between them to written form if possible. Other residents must be directed to take any complaints to the landlord and not to the tenant. The tenant will refrain from communicating directly with other residents in regard to complaints that may have been lodged.

H hereby order that the One Month Notice to End Tenancy for Cause dated December 31, 2013 is cancelled an of no force nor effect.

Conclusion

The tenant is successful in the application and the One Month Notice to End Tenancy for Cause is cancelled. The parties are ordered to restrict communication to written form if possible.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 19, 2014

Residential Tenancy Branch