Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORTE REALTY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on September 8, 2014, to cancel a 1 Month Notice to end tenancy for cause and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent and the Tenant. Each person gave affirmed testimony and confirmed receipt of evidence served by the other.

The Landlord confirmed receipt of the Tenant's evidence which was served on October 3, 2014.

The Tenant argued that the Landlord's evidence was served upon him in two different manners and neither package was received within the required timeframes. He noted that one package of evidence was sent to him by registered mail, post marked October 21, 2014 and was therefore not deemed received by him until October 26, 2014. He stated that he chose not to pick up the registered mail until Friday October 24, 2014, which falls outside of the required deadline.

The Tenant stated that the second package of the Landlord's evidence was slid under his door on October 21, 2014 which he argued was not an approved method for service as noted in the RTB fact sheet # RTB 114. The Tenant confirmed that on October 21st, 2014, he had seen the evidence that was slid under his door but he did not pick it up or read it until October 23, 2014, because he simply did not want to deal with it prior to that date.

The Tenant acknowledged that he had reviewed the Landlord's evidence prior to the scheduled hearing. During the course of the hearing, despite the Tenant arguing that the Landlord's evidence was not served as required, the Tenant provided arguments questioning the validity of the letters submitted in the Landlord's evidence which were allegedly from other tenants. He noted those letters were unsigned and did not have a comma behind the word sincerely.

The *Residential Tenancy Branch Rules of Procedure # 3.17* provides that the Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Based on the foregoing, I note that the Tenant filed his application for dispute resolution on September 8, 2014, and did not serve his evidence until almost a month later on October 3, 2014. The respondent's evidence was then prepared and served 2 ½ weeks later. The

respondent's evidence was received by the Tenant prior to the hearing and with enough time for the Tenant to review the evidence and prepare an oral response. Accordingly, I accept the Landlord's evidence, as they needed time to respond to the Tenant's submissions. Accepting this evidence does not unreasonably prejudice the Tenant as he had time to review it prior to the hearing and responded to it.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice for cause issued August 31, 2014, be cancelled or upheld?
2. Has the Tenant proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on January 5, 2006 and switched to a month to month after one year. The Tenant was initially required to pay rent of $750.00 plus $10.00 parking which has subsequently been increased to $820.00 per month without parking. On or before January 5, 2006 the Tenant paid $375.00 as the security deposit.

The Landlord testified that he has been resident manager at this building for just over three years and in that three years he has had to deal with the Tenant's complaints about other tenants making too much noise. He noted that these complaints generally occur during the summer months when the Tenant has his window open and never involve significant issues such as neighbors having parties, playing loud music, or loud music. Rather, all of the Tenant's complaints have been about other tenants talking quietly on their deck or patio or the Tenant claiming he has heard another tenant using a subwoofer, which that tenant does not have.

The Landlord argued that during these past few years he has explained to the Tenant what is reasonable and not reasonable noise levels and he has also attempted to counsel the Tenant on how to live comfortable in a communal living arrangement. He's instructed the Tenant to close his windows if he is bothered by others being outside enjoying their decks in the summertime.

The Landlord noted that approximately one year ago he had to instruct the Tenant to stop approaching other tenants on his own, as the Landlord was receiving complaints that this Tenant was interrupting other tenant's during their normal day to day living activities and complaining that they were making too much noise.

The Landlord noted that there were 2 complaints from this Tenant in 2013 and 2 complaints in 2014 all of which he determined to be unwarranted. He said the most recent occurrence was August 29, 2014, around 11:00 p.m. when the Tenant called and woke him up and requested

that he attend to a noise complaint. The Landlord submitted that when he attended the unit he found two people engaged in a normal conversation on a neighboring patio, which he found to be just another unjustified complaint. Again, he told the Tenant to shut his windows if the conversation was bothering him.

The Landlord confirmed that it was the August 29, 2014 complaint that was the deciding factor in him serving the Tenant a 1 Month Notice to end tenancy for cause on August 31, 2014, listing the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord

In addition to his written submission, which included information on what the municipality considered allowable decibel levels for noise by-laws, the Tenant testified that he does not possess a decibel meter and he was not tracking the decibel levels of the conversations or noises that had been bothering him.

The Tenant argued that it is the Landlord's job to take his complaints, even if his complaints are found to be unreasonable. He noted that 3 of the four complaints in 2013-2014 were initiated solely by him and the other complaint came from himself and one other tenant complaining about the loud noise coming from the unit in-between their two units.

The Tenant stated that the Landlord ought to have reacted in a less extreme manner when investigating his complaint on August 29, 2014. He said the Landlord began to yell and scream at him about his complaint being frivolous and when the Landlord left his apartment the Landlord slapped the elevator making a loud noise.

The Tenant submitted that he found the Landlord's behaviour the night of August 29, 2014, to be intimidating and harassing in nature. He argued that the Landlord left him emotionally distressed after serving him with a 1 Month Notice to end tenancy two days later, and as a result he is seeking $2,000.00 compensation for loss of quiet enjoyment.
The Tenant noted that he had no prior warnings or indication that he would be served an eviction notice.

In closing, the Landlord confirmed that he had hit the elevator with his hand but that was done to try and stop the elevator door from closing and not out of anger. He argued that the Tenant does not have any sense of what is reasonable. The Agent argued that the Tenant's claim for $2,000.00 was not reasonable as he had not been out of pocket for any expenses.

Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

As noted above, the Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

The undisputed evidence provided that the Tenant had initiated a total of four noise complaints in the last two years, 3 of which the Landlord determined to be unreasonable. The Tenant was not issued any written warnings pertaining to those noise complaints, nor was he issued written notice of what would constitute a valid or reasonable noise complaint. That being said, the undisputed evidence provided that the Landlord had attempted to counsel the Tenant on ways to live in a communal living environment, which included closing his windows if he was being disturbed by others outside enjoying the summer weather.

Section 47 1) (h) of the Act provides that the Landlord may end a tenancy by giving notice to end the tenancy if the tenant has not corrected a situation within a reasonable time after the landlord gives the tenant written notice to do so.

Based on the foregoing, I accept that the Tenant was not provided prior notice that he would be evicted if found to make further unsubstantiated noise complaints. I further accept that the Landlord had instructed the Tenant to contact him directly and not to approach other tenants with his complaints. Accordingly, I find there to be insufficient evidence to uphold the 1 Month Notice issued August 31, 2014; and the Notice is hereby cancelled.

In moving forward, I find that the best possible solution lies within the willingness and abilities of the parties to communicate appropriately and make accommodations for others residing in the rental building. To clarify, all tenants have the right to quiet enjoyment of their entire home, which includes the opportunity to enjoy peaceful conversations out on their patio or deck. I do not accept that normal conversations which occur outside and on occasion after 10:00 p.m. would substantiate a noise complaint. Therefore, the Tenant needs to find a way to manage his own sensitivities, such as closing his windows on occasions when others may be enjoying the use of their outside patios or decks in a reasonable manner.

Case law provides that in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The Residential Tenancy Policy Guideline # 6 provides that frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of persecution and intimidation. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Based on the above, and in consideration of the Tenant's submission that he felt intimidated, harassed, and emotionally stressed by the events which occurred August 29, 2014, and the issuance of the 1 Month Notice, I find the effects to be have been temporary and did not result

in the loss of use of the rental unit. Accordingly, I find there to be insufficient evidence to meet the standard of proof for loss of quiet enjoyment, and the claim is dismissed, without leave to reapply.

The Tenant has succeeded with a portion of their application; therefore, I award recovery of the **$50.00** filing fee.

Conclusion

The 1 Month Notice to end tenancy issued for cause on August 31, 2014, is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct the one time award of **$50.00** from his next rent payment, as full satisfaction of recovery of the filing fee.

The Tenant's monetary claim for loss of quiet enjoyment is HEREBY 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: October 30, 2014

Residential Tenancy Branch