



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKSRON DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNL, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause, dated and served February 28, 2015 given alleging that the tenant or a person permitted on the premises by him have significantly interfered with or unreasonably disturbed another occupant or the landlord. He also seeks to cancel a two month Notice to End Tenancy for landlord use of property.

Issue(s) to be Decided

Does the relevant evidence given at hearing show on a balance of probabilities that either Notice is based on good grounds?

Background and Evidence

The rental unit is a bachelor apartment on the top floor of an older apartment building. The tenancy started in May 2014. The monthly rent is \$900.00, due on the first of each month. The landlord holds a \$450.00 security deposit.

In regard to the one month Notice given alleging cause, the landlord presented two other tenants of the apartment building to give evidence.

Mr. P.T. lives directly below a portion of the applicant tenant's suite. He provided a written statement to accompany his testimony. He says that last year there were complaints to the landlord about the noise from the tenant's apartment, that the landlord unsuccessfully tried to evict the tenant and that the noise subsided after that. It would appear that the noise was the sound of the tenant opening and closing a balcony door in his suite. In Mr. P.T.'s view the tenant is able to open and close it quietly but sometimes chooses to opening with so as to create loud noise. He says the noise disturbances have escalated again. He is disturbed by banging noises from the tenant's

apartment, one time so heavy that a picture fell from the wall of his apartment. He knows that his neighbour Mr. G.S. whose rental unit is also directly below a portion of the tenant's suite, bangs on the ceiling to try to stop the noise.

Mr. P.T. relates an incident that occurred on the Family Day holiday weekend. The neighbouring tenant Mr. G.S. banged on his ceiling in an attempt to quell the noise and the tenant came downstairs to Mr. G.S.'s door where he banged on the door and yelled at Mr. G.S. Mr. P.T. says that he and his wife felt threatened by the tenant's conduct.

Mr. G.S., a fifty seven year old man, testified and referred to three written complaints he made to the landlord in January 2015 and a written statement. He has lived in his apartment for about 15 years. He says that for many years the tenant's rental unit was occupied by a woman named "C" and that there was never a problem with excessive noise from above.

The first complaint letter, dated January 18th, records an incident of repeated thumping, which he speculates was the sound of the tenant's daughter running around in the suite. Mr. G.S. "thumped" on his ceiling thinking to notify the tenant that the noise was disturbing. The tenant came to his door and words were exchanged.

The second complaint letter is dated the next day, January 19th. Mr. G.S. testified that the tenant was thumping on the floor late at night. Mr. G.S. feels it was deliberate. He says the thumping started at about 5:00 p.m. There was a thump about every ten minutes. The thumping continued after Mr. G.S. went to bed at about 10:00 p.m. At about 11:00 p.m. Mr. G.S. yelled up that he was calling the police. He did speak to the police department by phone. The noise stopped.

The third complaint regards incidents occurring during the weekend of February 7th. Mr. G.S. describes being disturbed by what sounded like furniture being moved around in the tenant's suite and a constant banging on the floor above. At 9:30 p.m. on the Sunday Mr. G.S. went to bed but the banging continued until 11:00 when Mr. G.S. yelled up to the tenant to keep the noise down. There was no response and the banging continued. He described the noise as a loud banging, like someone is constantly running back and forth. Mr. G.S. banged on the ceiling and then heard three very loud bangs, "like a bomb was going off." He says the tenant then came downstairs to his door, banged loudly on it and yelled profanities and threats in an aggressive tone.

The next morning Mr. G.S. called the police. They have not intervened in this dispute. No charges or warnings have been issued to anyone.

Ms. L.S., the resident building manager, testified that the tenant is a weight lifter and she opines that the noise is the sound of weights hitting the floor. She has offered alternative accommodation on the main floor but it was declined.

The landlord's representatives submitted a written statement from a third tenant, Ms. C.H., but the statement was not signed by her and so I decline to give it any consideration.

In regard to the two month Notice, Ms. L.S. testified that her father Mr. B. is the sole shareholder of the landlord limited liability corporation and that it is intended that her daughter, Mr. B.'s granddaughter, will be moving in to the tenant's suite.

The tenant Mr. B. testified that he is thirty nine years old. His nine year old daughter visits him every second weekend. He sees no reason why she should not be allowed to play in his apartment. He says that for the most part the noise being complained about is him simply opening and closing the sliding glass door to his balcony. He says there has been no "excessive" banging. He says that when Mr. G.S. bangs on the ceiling it scares his daughter. He admits that he has a weight bench, free weights and dumbbells in his suite. He says he has an area carpet placed on the floor.

Analysis

In regard to the two month Notice, and as discussed at hearing, the *Residential Tenancy Act* (the "Act") s.49, provides that a landlord that is a "family corporation" may give a two month Notice for landlord use of property if a "close family member" of the voting share owner of the family corporation intends to occupy the rental unit.

"Family corporation" is defined by s.49(1) as a corporation in which all the voting shares are owned by (a) one individual, or (b) one individual plus one or more of that individual's brother, sister or close family members. As Mr. B. apparently owns all the shares of the corporation, it is a family corporation.

"Close family member" is defined as (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

The evidence shows that Mr. B.'s grandchild intends to occupy the rental unit. She is not a close family member within the definition. The landlord cannot give a Notice to End Tenancy based upon the sole voting shareholder's granddaughter's intent to occupy the rental unit and for that reason the two month Notice is not valid. I cancel it.

In regard to the one month Notice for cause, this case is a bit unusual. It involves a resident manager but the complaining occupants do not seem to have complained to her about noise at the time the noise is disturbing them. Thus the resident manager Ms. A.M. does not appear to have attended and investigated the complaints as normally would happen.

Nevertheless, it is notable that there appears to have been no significant interactions between the complaining occupants and the applicant tenant but for those surrounding the noise complaints. There is no evidence of any secondary motives on the part of the complaining occupants and that is significant in weighing their testimony.

It must be said that a significant factor in cases such as this one is the fact of the age and style of the building involved. It appears to be an older building and one in which noise easily travels between floors, as is evident by Mr. G.S.'s ability to shout up from his suite into the suite of the applicant tenant.

In such accommodation it is incumbent on occupants to govern their noise making accordingly. At the same time, a neighbouring tenant must expect that the normal noise of living, which I consider to include the sound of a child running across a floor, will be heard on occasion.

I accept the evidence of the complaining tenants Mr. P.T. and Mr. G.S. that for significant periods of time the applicant tenant has lived upstairs without emitting any disturbing noise. I find that on the weekend of February 7, 2015, during the late evening, the tenant was causing noise in the nature of a banging noise in his apartment and that it was unreasonably disturbing another tenant Mr. G.S. I find it most likely that the applicant tenant was using his weights and was dropping them or placing them heavily on the floor. Given the past history, I find the tenant knew or should have known that the sound would likely disturb the tenants living below. I find that even after becoming aware of Mr. G.S.'s complaint from below, the applicant tenant continued the noise and purposefully increased it by dropping a heavy weight onto the floor.

The applicant unreasonably disturbed another occupant.

The applicant tenant's next action in coming downstairs to bang and shout at the tenant Mr. G.S.'s door was also an unreasonable disturbance of another occupant.

For these reasons I find that the landlord has justified the one month Notice given to the tenant and I dismiss his application to cancel it.

Conclusion

The tenant's application regarding the two month Notice to End Tenancy for landlord use of property dated February 28, 2015 is allowed. That Notice is hereby cancelled.

The tenant's application regarding the one month Notice to End Tenancy for cause also dated February 28, 2015 is dismissed. As a result of that Notice the tenancy has ended. The effective date in the Notice is shown to be April 1, 2015 and accordingly, this tenancy ended on April 1, 2015. The landlord will have 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: April 02, 2015

Residential Tenancy Branch

