



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, MND, MNSD, FF

Introduction

This was a cross-application hearing.

On March 27, 2015 the tenant applied to cancel a 1 month Notice to end tenancy for cause to and to recover the filing fee costs.

On April 20, 2015 the landlord applied requesting an Order of possession based on cause, a monetary Order for damage to the rental unit, to retain the security deposit and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The landlord confirmed that the most critical matter to deal with is an Order of possession. For disputes to be combined on an application they must be related. Not all the claims on the landlord's application were sufficiently related to the Notice ending tenancy. Therefore, pursuant to section 2.3 of the Rules of Procedure, I dealt with the matters related to an Order of possession. The balance of the landlord's application is dismissed with leave to re-apply.

The parties agreed that the landlord issued a 1 month Notice to end tenancy for cause on March 24, 2015. The tenant disputed that Notice on March 27, 2015.

After receiving the tenant's hearing package the landlord realized the March 24, 2015 Notice did not provide reasons. On April 1, 2015 the landlord then issued another 1

month Notice to end tenancy for cause. That Notice gave two reasons for ending the tenancy.

The parties agreed, after much discussion regarding the tenant's intentions, that the Notice issued on March 24, 2015 was of no force or effect. The parties agreed that the hearing would proceed allowing the tenant to dispute the April 1, 2015 1 month Notice to end tenancy for cause.

The tenant confirmed receipt of the landlord's evidence package that was given as part of the application sent via registered mail on April 22, 2015. The tenant received the hearing documents on April 24, 2015. The tenant said he had wanted to make a written rebuttal submission and that he had been studying the landlord's documents and preparing his response.

I determined that the tenant had been given the landlord's documents in time to allow his submission at least seven days before the hearing. Therefore, the tenant had sufficient time, as set out in the Rules of Procedure, to make whatever written rebuttal submission he wished. A written submission was not made.

Issue(s) to be Decided

Should the 1 month Notice to end tenancy for cause issued on April 1, 2015 be cancelled or is the landlord entitled to an Order of possession?

Background and Evidence

The tenancy commenced on March 1, 2002, rent is \$650.00 per month, due on the first day of each month. The tenant lives on the third floor of the 35 unit building; the second above-ground floor.

The landlord and the tenant agreed that a 1 month Notice to end tenancy for cause was given to the tenant on April 2, 2015. The Notice had an effective date of May 31, 2015.

The Notice included two reasons:

- that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The landlord set out a number of matters related to conflict between the tenant and other occupants of the building dating back to November 2012. The landlord said that in January 2014 occupants of the unit above the tenant said the tenant had come to

their door regarding noise complaints. They were uncomfortable and did not want the tenant approaching them.

On January 20, 2014 the landlord issued a letter to the tenant, a copy was supplied as evidence. The tenant was warned it was the landlord's job to communicate with other occupants and that his recent vulgar letter to another tenant was upsetting. There had been an issue involving minor vehicle damage.

In June 2014 the landlord wrote the tenant an undated letter, a copy of which was supplied as evidence. The tenant was informed that complaints that the tenant had been going to other occupant's doors to complain about noise and that he was pounding on the ceiling. The tenant was told he had been reminded that he was to only approach the landlord and that he could not continue to go to other occupant's doors to complain. The tenant as told this was the last warning he would receive.

In June 2014 the landlord received a complaint regarding noise coming from the tenant's unit. A copy of the note issued by the occupant was submitted as evidence. The occupant complained of sounds between 1:30 a.m. and 3 a.m. Extremely loud music was coming through the bedroom wall. This happened during the week when the occupant had to work. The occupant went into the hallway to confirm the sound was coming from the tenant's unit. The occupant knocked on the door but the tenant did not answer. This complaint was made several days later and then a few days after that the tenant came to the occupant's door asking if she had made the complaint. The occupant wrote that the tenant did not appear to be happy.

On March 3, 2015 the landlord received a noise complaint from an occupant who had moved into the building in September 2014. A copy of the complaint was submitted as evidence. The occupant reported that over the past six months she had been continually disrupted by the tenant who lives above her (unit 304.) The occupant reported that the tenant vacuumed, banged and moved furniture, played music intermittently, thumped, swept and made clunking sounds between the hours of 11:30 p.m. and 3 a.m. The occupant had banged on the ceiling on several occasions and on one occasion the sounds stopped. The occupant said she needs quiet between 11 p.m. and 7 a.m. and that she reached the breaking point as the disruptions were causing her to lose sleep, affecting her physical and mental wellbeing.

On March 4, 2015 the occupant living directly above the tenant wrote a letter of complaint. A copy of the letter was supplied as evidence. The occupant had been awakened on October 1, 2014 by loud music at 3:45 a.m.; this lasted until 4:15 a.m. The disturbance happened again on October 6, 2014 between 11 p.m. and 11:45 p.m. The music would be sporadic during the day. On January 2, 2015 the tenant approached the occupant and a friend while they were in the stairwell, asking them to be quieter when they used the stairs. This made the occupant and her friend very uncomfortable. There were further disturbances during January and February 2015 with the occupant being awakened by blaring music. On February 12, 2015 at 10 p.m. the tenant had his music turned up. The letter explained that the music does not stay

loud for more than five minutes to an hour. The occupant said that she is suffering from the disturbances so had decided to make a formal complaint.

On March 10, 2015 the landlord wrote the tenant a letter, a copy was supplied as evidence. The tenant was told that two complaints had been made regarding music blaring for short periods of time, with repeated occurrences between the hours of 11 p.m. and 4:15 a.m. The tenant was warned this could not continue as they had been happening since August 2014. The tenant was reminded the landlord had tried to work with him to find solutions to other problems but that the excessive noise had to stop. The tenant was warned a Notice to end tenancy could be issued.

On March 19, 2015 the occupant of the unit below the tenant was using the bar b q on her balcony. The tenant was on his balcony sweeping excess water and grime down the drain onto her balcony. She asked the tenant to stop and the tenant replied that she would have to take it up with the landlord. The occupant said she would but asked that he cease while she was using her balcony. The tenant stopped once the occupant's husband swore and leaned over so the tenant could see him. The occupant reported there had been less nighttime activity but still ongoing thumping noise, and opening and closing drawers between midnight and 2 a.m. The occupant said she falls asleep and is then awakened by the sounds that periodically come from the unit above.

The landlord did not take any action in relation to the March 19, 2015 report as the tenant had just been given a warning.

On March 21, 2015 the landlord was awakened at 1:45 a.m. by the police, requesting access to the building. There was no dispute that the tenant had called a help line, which resulted in the police being dispatched to the building. The tenant said he had told the person he called that he would wait outside of the building, but he did not go outside and the landlord was contacted so that the police could go to the tenant's rental unit. The tenant was not removed by the police.

The landlord said that when she came out of her unit the tenant was there and did not appear to be experiencing any issues. The landlord became very concerned given the tenant's behaviour attracted the police; the landlord is not sure what the tenant may do next. The landlord said she has been overwhelmed and exhausted by trying to assist the tenant but she can longer help him solve his problems and have him remain in the building. This incident left the landlord afraid for her safety and the safety of others in the building.

On March 31, 2015 an occupant who had previously complained of disturbances in June 2014 was approached by the tenant. The tenant wanted to know if she had heard anything coming from his apartment and if she had complained to the landlord. The tenant told her that he plays music every night and that two of his songs have a couple of very loud parts.

The landlord submitted copies of 18 notes issued by the tenant to the landlord. Some of the notes are undated.

On April 3, 2015 the tenant issued six separate notes to the landlord. The notes submit the landlord is harassing the tenant about a florescent grow light and ends with the comment "Guess what." Another tells the landlord that she expects the tenant to follow standards but she does not and that the laundry room is a mess and lighting on the third level is not working. The tenant asks that the p-trap in his kitchen sink be repaired and for compensation for re-pointing his shower stall tiles and for replacement of the toilet. The tenant requested replacement cost for items damaged by the dryer and compensation due to faulty timing on the washer and that foot-stomping and hammering between 7 a.m. and 10:30 p.m. from another unit must stop.

Between January 2, 2014 and January 20, 2014 the tenant issued eight notes to the landlord; four of these were issued on January 2, 2014. The tenant complains about noise coming from another unit and states "you can you imagine how vulgar I might be now?" Several letters thank the landlord for addressing problems reported by the tenant.

The tenant said that sound travels through the wood-frame building and that he has pointed out sounds caused by others. The tenant denied that he causes any noise that could disturb others.

The complaint made on March 15, 2015 is not accurate. The tenant asked the occupant if she had any complaint, not if it was she who had complained. The tenant responded to the landlord's submission by saying that he is not in control of other people's responses.

The tenant confirmed that he was sweeping the floor of his balcony and that his downspout does empty onto the floor of the balcony below his. When the occupant asked he did cease sweeping.

In relation to the letter issued by the landlord on March 10, 2015 the tenant said that he is a night owl, but is not in his bedroom. After a complaint made several years ago he moved his radio and wrapped it in foam. The tenant said he plays music when he sleeps and that some opera has crescendos. The tenant said he is well aware of the concerns and will turn his TV down. The tenant stated that the sounds are also unverified and not coming from his unit. There has never been any discussion regarding the origin of the reported sounds; the tenant has just accepted the letters and accusations without offense.

The tenant denied that he moves furniture in the night as he has very little furniture. The tenant does not own a blender. The tenant also hears noises such as foot stomping at 7 a.m. and does not where that sound comes from.

The tenant said that the sounds are from normal human activity. He does not go to bed before 3 or 6 a.m. but keeps his TV on low. The landlord just wants to believe that the sounds are caused by the tenant.

The tenant said that the multiple notes issued to the landlord on April 2, 2015 were the result of him being in a fit of pique.

Analysis

When a landlord issues a Notice to end tenancy and the tenant disputes the Notice, the landlord has the burden of proving the reasons on the Notice.

During the hearing it was apparent that the landlord is becoming stressed by the behaviour of the tenant, but I find that the level of stress that the landlord expressed did not align, on the balance of probabilities, with sufficient cause to end the tenancy for this reason. Some other occupants are alleging disturbances that are causing them distress and that will be dealt with in relation to the allegation of unreasonable disturbance. There was no independent submission before me that demonstrated there has been a health or safety risk posed.

The incident that involved a call to a help line and the resulting visit by the police was unfortunate, but I find that it is not an event that meets the burden of proving a health or safety risk or unreasonable disturbance. If a tenant is in need of emergency services or they are dispatched in the belief intervention is required a tenant cannot be faulted. This was a one-time occurrence with no evidence that the tenant intended any malice.

There is a history of the tenant writing the landlord repeated letters and notes. Of most concern are the multiple notes issued by the tenant on April 2, 2015. I can only interpret those notes as intended to somehow bother the landlord. The tenant said he was in a fit of pique; however this does not confer a right to essentially bombard the landlord with notes that appear to raise insignificant issues.

A tenant does have the right to raise legitimate tenancy issues with a landlord and written communication is often a preferred method of communication. However, the tenant is warned that he must exercise caution when issuing notes to the landlord; ensuring they are reasonable and of a nature than are not viewed as intending to harass. From the evidence before me I find that the repeated notes to date fall into the category of annoying, but that further repeated notes based on insignificant issues could be viewed as an attempt to harass the landlord.

Therefore, I find that there is insufficient evidence to end this tenancy based on serious jeopardy to the health or safety of other occupants or the landlord.

I have considered the submissions that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. This year there have been two

complaints of noise caused by the tenant; both made in March 2015. The Notice to end tenancy was issued on March 24, 2015 and corrected by issuing the April 1, 2015 Notice.

The March 24, 2015 Notice to end tenancy followed the two March complaints of noise made and the March 10, 2015 warning letter to the tenant. Following the March 10, 2015 warning the complaint related to balcony was made but not discussed with the tenant.

Since the written warning given to the tenant on March 10, 2015 there have been no other reports of any disturbance caused by the tenant that I find should end the tenancy. The incident that occurred on the balcony appears to have been minor and not proven to have been intentional on the part of the tenant. The balconies do not have downspouts and flow onto the lower unit balcony. Once the tenant realized he was causing a problem he ceased sweeping.

The complaints and warning were followed by the March 21, 2015 police incident which I find has no bearing on the tenancy as a person has the right to seek out assistance for personal issues. There was no evidence before me that the tenant made the call for assistance in an attempt to cause a disturbance to the landlord.

Even though the March 24, 2015 Notice failed to include any reasons for ending tenancy it was seven days later that the tenant approached another occupant to ask if she had complained about him. It had been some time since the January 2014 and June 2014 letters issued to the tenant warning that he was not to approach other occupants with complaints. There was no reason that the tenant would not have recalled the past instructions given by the landlord. The June 2014 letter had issued a final warning to the tenant.

The tenant confirmed he approached the occupant on March 31, 2015 but denied he asked the occupant if she had complained. The tenant's explanation was based on what I find was semantics. Either the tenant asked the occupant if she had a complaint or if she had made a complaint. Both versions would be expected to have the same impact on the occupant; that she was being asked if she had said something to the landlord about the tenant. I found the note given to the landlord by the occupant believable and lacking malice.

The tenant may take the April 1, 2015 Notice to end tenancy that his approaching other occupants to ask them if they have made complaints or to engage with them over tenancy issues will not be tolerated and could now result in an end to the tenancy. The June 2014 letter did not inform the tenant that his tenancy could end and considerable time has passed since that warning. However, the Notice to end tenancy has made the landlord's intentions very clear.

From the evidence before me I find that to April 1, 2015 the landlord has not provided sufficient evidence in support of a significant interference or unreasonable disturbance. Some complaints are dated and the final warning given on March 10, 2015 was not followed by any further valid complaint. Therefore, I find that the 1 month Notice to end

tenancy for cause issued on April 1, 2015 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

However, the tenant is forewarned. From the evidence before me I find that the tenant has reached a point in his tenancy that further complaints of disturbance or interfering with other occupants could result in the end of his tenancy. All occupants have the right to quiet enjoyment. A reasonable person would accept that occupants should be able to expect hours of quiet between 11 p.m. and 7 a.m. daily. The tenant may well be a night owl but he may not engage in activity throughout the night that causes any disturbance to others. The tenant is well aware that is a wood-frame building; therefore watching TV and listening to music throughout the night could be expected to cause a disturbance. A wood-frame building does give the tenant licence to cause disturbances during the night.

There can be no confusion on the part of the tenant that his tenancy could be in jeopardy. The tenant has been given a very clear letter dated March 10, 2015 warning him that any further noise complaints would result in a Notice to end tenancy for cause. The letter stands and can support a future Notice to end tenancy should the tenant give the landlord cause. It is only because there was no other complaint regarding noise after this warning was issued that the tenancy has not ended based on the April 1, 2015 Notice.

Further, repeated letters to the landlord for minor or uncalled for reasons and any approach to other occupants that could be deemed to cause interference are clearly behaviors' that could have consequences for the tenant.

I decline filing fee costs to either party.

Conclusion

The 1 month Notice to end tenancy for cause issued on April 1, 2015 is of no force and effect.

There was agreement that the 1 month Notice to end tenancy for cause issued on March 24, 2015 is of no force and effect.

Filing fee costs are declined.

This decision is final and binding and 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 12, 2015

Residential Tenancy Branch