Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC, CNR, FFT
For the landlord: OPC, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on September 30, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the "One-Month Notice"). They also applied for an order to cancel a 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the "10-Day Notice"). They also applied for reimbursement of the Application filing fee.

The landlord filed a cross-Application for Dispute Resolution (the "cross-Application") on October 13, 2020 seeking an order of possession. This is following their service of the One-Month Notice to the tenant on September 22, 2020. Additionally, they applied for reimbursement of the cross-Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 7, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenant and an agent of the landlord (herein identified as the "landlord") attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. A witness appeared for the landlord in the hearing.

Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded. A witness appeared for the landlord – this individual affirmed an oath and attended the early portion of the hearing to provide their direct testimony only.

Preliminary Matter

In the Application the tenant specified a separate ground, to cancel the 10-Day Notice. At the start of the hearing I clarified whether this indication in their Application was correct. The tenant identified it was not correct. I sever this issue from consideration in this hearing for this reason.

Issue(s) to be Decided

- Is the tenant entitled to an order to cancel the One Month Notice, pursuant to section 47 of the *Act*?

- If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to section 55 of the *Act*?

- Is the tenant entitled to a reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

- Is the landlord entitled to a reimbursement of the cross-Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord presented a copy of the tenancy agreement. The tenancy began on June 1, 2019 after the tenant signed the agreement with the landlord on April 17, 2019. The unit rent amount was set at $1,190; however, in the hearing the landlord presented that the rent amount payable by the tenant in a subsidized plan is $510 per month.

The agreement contains the following clause to which the tenant agrees:

> (viii) not to cause or allow any noise or interference that, in the opinion of the landlord, is disturbing to the comfort, quiet enjoyment or safety of the other occupants of the Residential Property

Both parties provided a copy of the One-Month Notice document, issued by the landlord on September 22, 2020. The first page of the document contains the indication that the landlord

served the document by attaching the document to the door or placing it in the mailbox. A portion on page 2 of the document is highlighted, to show the tenant is "considered to have received the Notice . . . on the following: three days after the landlord either leaves the Notice . . . posts it on the door. . ."

On page 2 of the document the landlord indicated the following reasons:

- tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided the following details:

> We have written to this tenant three times regarding excessive noise/disturbances over the past 6 months; April 15, 2020, June 22, 2020-and July 22, 2020. A 4th letter accompanies the Notice dated September 22, 2020.

Copies of these letters appear in both parties' evidence. Each letter describes some description matching "heavy banging" and "foot traffic".

They also provided copies from handwritten notes that are the written complaints of the tenant in the unit immediately below the tenant's rental unit. Each note is signed and dated and contains lists of specific instances of noise. There are times provided throughout. Each letter describes "heavy banging, and light fixture rattling and foot traffic."

The landlord provided copies of their letters to the tenant listed in the One-Month Notice. Each letter refers to the "Tenants Covenants of your signed Tenancy Agreement". Each successive letter after the first also refers to the possibility of termination "should any further reports of unreasonable noise or disturbance be reported."

In the hearing, the landlord's witness set out their experience living in the unit under the tenant. This is for "1.5 years going on" – the "behaviour goes on and doesn't end". Due to "heavy banging, heavy objects on floor – heavy objects dragged" a "consistent night sleep is not possible." They described the sound as "extreme loud banging, some kind of furniture" and "not just foot traffic."

The landlord reiterated they wrote to the tenant four times about this problem, this within the past six months. They noted there was another complaint since filing their cross-Application for this hearing.

The tenant provided a set of documentary evidence in advance of the hearing. This contains the following:

- A handwritten response dated October 7, 2020 in which they state there were complaints they had abandoned their child in the unit – other neighbours provided there were no issues – they questioned the credibility of the complainant, this due to the previous tenant in their unit being evicted for the same reason.
- A typed note dated November 22, 2020 wherein they describe being "the kind of person who has always been open for discussion and yet no one came to me. . ." They also described the complainant's approach at their own unit door on one occasion that they felt was inappropriate – this gives the feeling that "the tenant under my suite seemed to be watching myself as my [child] said the same that [they] felt that [the complainant] had been doing the same as well towards [them]"
- in another typed document the tenant added: "This could be due to newly renovated floors from when I first moved in"
- a document containing the statement: "This tenant is being evicted based on one person stating the tenant is too loud." Also: "I have not heard any noise to constitute such an accusation." This bears the signatures of seventeen other building residents.
- a "timeline of noise disturbances" gives details on separate times – these are described as "reasonable noise" with late arrivals home from work and a shower after that.

In the hearing the tenant described their change of furniture, and a single incident of their child moving a chair across the floor.

The landlord responded to say that the letters described "banging, dragging, crashing". They alluded to "arguments" between the tenant and their child. The landlord also described "reports of other people [i.e., the child's friends] in the unit" with reports coming "all through [the complainant] as there is no building manager there."

Analysis

Section 47 of the *Act* states, in part:

> (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
> (d) 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,

. . .

(h) the tenant
(i) has failed to comply with a material term, and
(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord provided all correspondence in this matter and spoke to the reasons in their oral testimony; however, I find the evidence presented is not legitimate. This invalidates the notice.

There is evidence to show that noise was an issue; however, all the evidence shows it is an issue for one individual who lives under the tenant. I find other residents within the property providing their signatures counts as evidence showing differing accounts, contrary to that of the witness here. There is no record of other neighbours complaining of noise from the tenant. With reference to the *Act* and the wording provided on the One-Month Notice, I am not satisfied there are actions of the tenant that *significantly* interfere or *unreasonably* disturb another occupant.

In sum, the complaints are all from one single witness. Though difficult for the landlord to achieve, there is a higher threshold of proof when it comes to ending a tenancy for this reason. The noise complaints are not independently verified, and in this regard the tenant providing their timeline – with a recall of specific events that *may* have triggered a complaint – and their canvassing of other building residents carries weight. This outweighs the account of the single resident below the tenant who I find is -- more likely than not -- more sensitive than most when it comes to the definition of noise.

I find it untenable that the noise from the tenant would continue in this fashion. I find the tenant was aware of the problem and made the effort to establish a timeline that describes events. I find there is no reason to call this evidence into question. I see this as evidence that the tenant was alive to the issue, responsive, and attempting to rectify the problematic situation brought to their attention by the landlord.

In summary, there is a single source of complaints, and the subject and severity of the noise issue is not verified. This is not a case of the complainant asking others to verify their own experience – which is not untoward in this situation. If the problem persisted in the manner described by the complainant, I find it reasonable for the landlord to undertake some kind of verification with other residents in the building, especially over the timeframe within which the complainant alleges this to be a problem.

For these reasons, I order the One Month Notice to be cancelled.

As the tenant was successful in this application, I find they are entitled to recover the $100.00 filing fee paid for this Application. I authorize the tenant to withhold the amount of $100.00 from one future rent payment.

Because they are not successful in this hearing, the landlord is not entitled to compensation for the cross-Application filing fee.

Conclusion

For the reasons above, I order the One Month Notice issued on September 22, 2020 is cancelled and the tenancy remains in full force and effect.

The landlord's cross-Application for an Order of Possession is dismissed without leave to re-apply.

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

Dated: December 14, 2020

Residential Tenancy Branch