



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, OLC, FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. At the hearing it was apparent that the Tenant did not require an Order requiring the Landlord to comply with the Act, with the exception of his application to set aside the Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, should be set aside.

Evidence and Background

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was served on the Tenant on September 30, 2008, which required the Tenant to vacate the rental unit on October 31, 2008. The reasons stated for the Notice to End Tenancy were 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.

The Agent for the Landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- On October 01, 2007, the occupant living directly below the Tenant reported that she was awakened at 3:10 am by the Tenant walking around, slamming drawers, and dropping things.
- The Landlord provided the Tenant with a written warning regarding the noise complaints on October 01, 2007
- The Tenant advised the Landlord that his wife had been leaving for the airport in the early morning hours of October 01, 2007
- On October 17, 2008, the occupant living directly below the Tenant reported that she is being repeatedly disturbed by the Tenant, after 11:00 p.m. and before 1:00 am
- In the October 17, 2008 email, the occupant does not describe the cause of the disturbances, but the Agent for the Landlord believes the disturbances relate to walking on the hardwood floors and moving about in the rental unit
- In the October 17, 2008 email, the occupant indicated that the disturbances lasted less than 10 minutes on 30 occasions; less than 30 minutes on 6 occasions; and less than one hour on 5 occasions
- The Landlord provided the Tenant with a second written warning regarding the noise complaints on September 11, 2008
- On September 19, 2008, the occupant living directly below the Tenant reported that she had been disturbed by the Tenant between 10:00 p.m. on September 18, 2008 and 1:30 a.m. on September 19, 2008, by behaviour she guessed was fall cleaning
- The occupant living below the Tenant has lived in her rental unit since 2001 and has never made complaints about previous occupants.

The Tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- He does not intentionally disturb the occupant living below him
- He does not play his music or television loudly
- He does nothing in his rental unit other than normal human activity
- He may drop things on occasion, but he does not do so intentionally
- He rarely closes the doors in his rental unit, although his windows are difficult to close and he does sometimes have to close them forcefully
- He tries to walk softly, but it is an old building and the hardwood floors are noisy
- He can hear his neighbours walking on their hardwood floors when they are walking near a door
- He normally goes to bed at 11:30 at night, although he does sometimes move about his rental unit during the night
- He submitted two letters from two neighbours who live on the same floor as him, who state they have never been disturbed by him.

The Agent for the Landlord argued that the letter from the Tenant's neighbours were not particularly relevant, as one of them lives across the hall and there are lockers dividing the other neighbours rental unit from the Tenant's rental unit. The Agent for the Landlord acknowledged that the hardwood floors greatly contribute to the noise between the Tenant's rental unit and the occupant who is being disturbed, however she stated that the Landlord is not willing to provide the Tenant with area carpets for the hardwood floors.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In reaching this conclusion I considered the following factors:

- Both parties acknowledged that the noise emanating from the rental unit is caused by normal daily living activities, such as walking and moving about in the unit
- There is no evidence that the Tenant is intentionally disturbing the occupant living below him
- There is no evidence that the Tenant is playing his music or television loudly, that he is yelling, partying, or displaying any other behaviour that can easily be remedied by the Tenant
- The evidence shows that the Tenant is not disturbing any other occupants who live near him, which is an indicator that the noise he is creating is not excessive.

In reaching this conclusion, I was strongly influenced by the wording of section 47(d)(i), which indicates that the Landlord can end a tenancy if a tenant or a person permitted on the residential property by a tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. In the circumstances before me, I do not find that noise caused by daily living activities, such as moving about in your home, constitutes a significant interference or an unreasonable disturbance.

In reaching this conclusion I was also influenced, to a lesser degree, by the fact that the Landlord is not making attempts to mitigate the noise complaints by providing the Tenant with area carpets that could minimize the disturbances experienced by the occupant living below him.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to section 47(2)(d)(i) of the *Act*, I

hereby set aside the One Month Notice to End Tenancy and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I hereby authorize the Tenant to deduct \$50.00 from his next rent payment, as compensation for the filing fee he paid for this Application for Dispute Resolution.

Date of Decision: October 31, 2008