



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy for Cause and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Did the landlord establish sufficient grounds to issue the notice to end tenancy?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a two level home where the applicant tenants occupy the upper level. Pursuant to a written agreement, the month to month tenancy started on March 1st, 2011.

The landlord testified that the downstairs tenant has been complaining about the noise level as soon as the applicant tenants moved in. The landlord stated that he has received complaints on a weekly basis of banging, smashing, of light fixtures rattling the

ceiling past 10:30 at night. He stated that installing sound insulation between the floors was not effective.

The tenant testified that he informed the landlord before starting the tenancy that he had two seven year old autistic boys, and that noise could be a problem. The tenant does not deny that his kids are noisy; he objects however that he raised the issue with the landlord before hand, and that furthermore, he equally can hear the downstairs' tenant's television and his snoring. During his testimony, the tenant announced that he had found new accommodations for his family, and that he will take occupancy on October 5th, 2011. With that information, the parties undertook to achieve a resolution to this dispute and the witness' testimony was no longer required.

Analysis

Section 63 of the *Residential Tenancy Act* provides for the parties to resolve their dispute during the dispute resolution proceedings. Accordingly, the parties have agreed to the following:

- The tenants will vacate the rental unit no later than October 5th, 2011.
- The tenants will pay rent until the last day of occupancy in October 2011, based on a *per diem* rate.
- Both parties mutually agree to end the tenancy under terms that are in accordance with all provisions of Division 5 of the Act [*At the End of a Tenancy.*]

Conclusion

This matter is settled in accordance with the terms agreed upon by the parties as stated above. Accordingly the tenant's application is dismissed and the 1 Month Notice to End Tenancy is hereby set aside.

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: September 30, 2011.

Residential Tenancy Branch