



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenants confirmed that they received the landlord's 1 Month Notice posted on their door on November 8, 2011. The landlord testified that on November 25, 2011 when he returned from vacation, he received a copy of the tenants' dispute resolution hearing package they posted on his door on November 21, 2011. Although posting a hearing package containing an application for dispute resolution on a landlord's door is not an approved method of service delivery as set out in the *Act*, the landlord did receive the tenants' package and was prepared to proceed with the tenants' application. I am satisfied that the 1 Month Notice and the tenants' dispute resolution hearing package were served and received by the parties.

The tenants confirmed that they received the landlord's written evidence package. The tenants' only written evidence was by way of the details of their dispute included in their application for dispute resolution and a CD-R disk that included videos of their written evidence, videos of various matters related to their tenancy, and recorded conversations. While some of this CD-R disk was somewhat visible, neither I nor the landlord could access the recordings or a substantial portion of the tenants' CD-R disk. I advised the tenants at the hearing that I would not be considering their CD-R disk in making my decision as they had provided no equipment to the Residential Tenancy Branch or the landlord whereby this evidence could be accessed. I also noted that at least some of the material provided appeared to address a second notice, a 10 Day Notice for Unpaid Rent for Utilities, that was not before me.

At the hearing, the landlord made an oral request for an Order of Possession should the tenants' application to cancel the 1 Month Notice be dismissed.

Issues(s) to be Decided

Should the tenants' application to cancel the 1 Month Notice be allowed? If not, should this tenancy end and should the landlords be issued an Order of Possession? If this tenancy were to continue, should an order be issued setting conditions on the landlord's right to enter the rental unit? Are the tenants entitled to recover their filing fee for their application from the landlord?

Background and Evidence

This periodic tenancy commenced on May 1, 2011. Monthly rent is set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$350.00 security deposit paid on May 1, 2011.

The landlord entered into written evidence a copy of his 1 Month Notice requiring this tenancy to end by December 31, 2011. In that Notice, the landlord cited the following reason for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord entered into written evidence a copy of two letters sent by the tenant who lives below the tenants in this rental property (the downstairs tenant). The downstairs tenant's letters of September 19, 2011 and October 24, 2011 complain of excessive noise originating in the tenants' rental unit. She stated that the noise and banging continues until 3 or 4 a.m. many nights. She stated that this noise occurs mostly from Monday until Thursday when her young daughter needs to sleep so that she can attend kindergarten the next day.

The landlord also entered undisputed evidence that he sent the tenants a letter on September 28, 2011. This letter read in part as follows:

...It has been brought to my attention again that there has been a lot of noise from your suite until all hours of the morning. This is disrupting other tenants. This can usually be rectified between tenants but this seems not to be the case. I have now received another written formal complaint, I am again requesting that you be more considerate towards other tenants in the building. Your co operation in this matter is appreciated. A copy of this letter will be placed in your file.

The tenants provided the following information in their application for dispute resolution.

...We were given one written notice of noise complaints and after speaking with the other tenants could not identify the source of the noise. Noises occur while we are in bed, described as "loud banging." We have never been informed in a reasonable time frame to be able to identify the noise. We do not believe that we are the cause of the noise.

Landlord has been harassing us and we feel that the attempt to evict us is due to his own personal reasons rather than actual cause. We feel unsafe and we would also like to set conditions on his right to enter the suite due to this.

The tenants testified that they have tried unsuccessfully to identify the source of the noises the downstairs tenant finds objectionable. They also said that they have asked the downstairs tenant to call them or knock on their door when the noises are occurring, even in the early hours of the morning so that they can try to identify the source of these noises. The tenants said that the downstairs tenant has not followed up with their proposal to identify the source of these noises. The female tenant speculated that the noise might be originating from the new floor that the landlord installed shortly before they moved into the rental unit. The landlord testified that this is unlikely because he has installed similar floors in 25 -30 rental units in the buildings he manages with no other complaints of noise resulting from these floors.

Analysis

When a landlord issues a 1 Month Notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

In this case, the landlord entered two letters from the downstairs tenant who lives immediately below the tenants. These letters maintain that there is noise originating from the tenants' rental unit that significantly interferes with and disturbs them. However, the author of this letter did not participate in this hearing. Although the landlord said that he had received a complaint about noise from this rental unit from another tenant who lived on the same floor as the tenants, this other tenant did not participate in this hearing nor did the landlord provide any written evidence from this tenant. The female tenant noted at the hearing that the landlord's written warning letter of September 28, 2011 stated that the landlord had "received another written formal complaint." When questioned about this statement by the female tenant and asked to identify details regarding the unnamed other written formal complaint, the landlord testified that he incorrectly worded his September 28, 2011 letter. He said that he should have stated in that warning letter that he had "received a written complaint."

While the landlord lives on the floor below the tenants in the same building, he said that he looks after a number of rental buildings and has not attended either the tenants'

rental unit or the downstairs tenant's rental unit when the downstairs tenant has complained of noise. The landlord testified that he has no personal knowledge of the downstairs tenant's allegation that the tenants are creating significant noise.

I find that the landlord's evidence to support his 1 Month Notice is based almost exclusively on the written evidence from the downstairs tenant who did not participate in this hearing. The landlord's September 28, 2011 letter was apparently sent and the 1 Month Notice issued on the basis of information that the landlord received from the downstairs tenant. While the landlord claimed to have received complaints from other tenants in the building about the noise originating in the tenants' rental unit, the landlord had no direct knowledge of the accuracy of these noise complaints nor did he enter any evidence from anyone but the downstairs tenant.

Although the source of the noises that are disturbing the downstairs tenant is certainly a mystery, I would expect that the landlord and the tenants would be able to correctly identify the sources of loud noises occurring at 3:00 or 4:00 a.m. when the tenants say they are always asleep. While I am not entirely convinced of the truthfulness of the tenants' testimony, I find that the landlord has failed to meet the burden of proving that the tenants are responsible for the noises that form the basis for the landlord's 1 Month Notice. The landlord's almost sole reliance on two letters received from the downstairs tenant raises questions as to whether there may be some interpersonal issue between the tenants in these two rental units or between the tenants and the landlord. Overall I find that the landlord provided insufficient evidence to allow me to find that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord. For these reasons, the tenant's application is allowed. The 1 Month Notice is set aside with the effect that this tenancy shall continue.

I have also considered the tenants' application for an order to suspend or set conditions on the landlord's right to enter their rental unit. In support of this part of their application, the tenants testified that they felt threatened by the landlord. They repeated some of the statements that the landlord had made which they found upsetting and threatening. Other than their assertion that the landlord had caused problems for another tenant in this building, they did not have any specific examples where the landlord had attempted to access their rental unit without first giving 24 hours written notice of an inspection as required under the *Act*. The landlord said that he provides such notice before arranging an inspection of a rental unit and has not strayed from this practice nor does he intend to with respect to this tenancy.

Based on the evidence presented by the parties, I dismiss the tenants' application for an order to set conditions on the landlord's right to enter their rental unit. I do so as I find that the tenants have not provided sufficient evidence to demonstrate that any such

order is either required or necessary, as the landlord is fully aware of the legislation regarding accessing rental units.

As the tenants have been successful in their application to cancel the landlord's 1 Month Notice, I find that the tenants are entitled to recover their \$50.00 filing fee for their application from the landlord. To give effect to this finding, I order the tenants to reduce their next scheduled monthly rent payment by \$50.00.

Conclusion

I allow the tenants' application to cancel the landlord's 1 Month Notice. The effect of this decision is that the tenancy continues. Since the tenants' application was not dismissed, there is no need to consider the landlord's oral request for an Order of Possession.

I dismiss the tenants' application for an order to set conditions or suspend the landlord's right to enter their rental unit.

I allow the tenants to recover their \$50.00 filing fee for their application from the landlord by ordering the tenants to reduce their next monthly rental payment by \$50.00.

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: December 06, 2011

Residential Tenancy Branch