



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel the One Month Notice to End Tenancy.

The tenant and her witness and the landlords and their witnesses attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice to End Tenancy?

Background and Evidence

Both parties agree that this tenancy started on August 01, 2007. The tenant pays a subsidized rent of \$381.00 per month which is paid on or before the first day of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on January 09, 2012 by posting the Notice to the tenant's door. This Notice has an effective date of February 28, 2012 and gives the tenant the following reasons to end the tenancy:

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,
- (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The landlord (SR) testifies that the tenant has been complaining for over two years that she has been disturbed by the tenants living above her unit. The tenant has complained that these tenants have been stomping around their unit, there are children running around the unit and sounds such as those made by a meat cleaver dropped in a sink. The tenant maintains that these noises and disturbances are continues all day and through the night. The landlord testifies that they investigated the tenant's complaints and the Building Manager (AS) went and sat in the tenants unit but no noise was ever heard from the tenants living above. One of the Health Service Coordinators (JF) also went to speak to the tenant to listen for noises but also heard nothing. The tenant was asked on more than one occasion to document any dates and times the noises took place so the landlord could investigate further but the tenant refused to do so.

The landlord testifies that she went to visit the tenants living above this tenant to investigate what could be the cause of the alleged noises. The tenants living above this tenant told the landlord that this tenant was disturbing them by banging on the ceiling. The tenants above informed the landlord that they have made life style changes to prevent noise from their unit such as not having their grandchildren over to visit and purchasing a large area carpet due to the tiled floors in their unit to soften the noise as this is a wooden frame building. The landlord testifies despite ongoing investigations they have been unable to substantiate the tenants claims that the tenants living above are causing her a disturbance other than normal living noise.

The landlord testifies that the tenant asked for a transfer to a different unit and provided doctor's notes about the tenant's health due to disturbances and suggesting the tenant is transferred. The landlord testifies that they had placed the tenant on an active transfer list when a top floor unit became available so the tenant would not have any issues with other

tenants living above her. The landlord testifies that a top floor unit has not yet been available as units have to be allocated on a priority basis.

The landlord testifies that in May, 2011 the tenant filed a complaint with the Ombudsman however the Ombudsman investigated the tenant's complaint and closed the file. A copy of letter from the Ombudsman is provided in evidence. The landlord testifies that the tenant filed an application for Dispute Resolution in July, 2011 concerning the landlords not transferring the tenant to a new unit however this application was dismissed. During this time period the tenant contacted the police about noise from the tenants upstairs. The police woke the upstairs tenants in the middle of the night. The tenants upstairs found this extremely distressing and stressful and they again complained about the tenant banging on their ceiling.

The landlord testifies that the tenant has been harassing and disturbing the tenants living above her unit by repeatedly banging on the ceiling. The landlord attended this tenants unit in September, 2011 and gave the tenant a letter informing the tenant that this behaviour must stop or her tenancy could be ended. In December, 2011 the tenant again called the police late at night and the police again came to the upstairs tenants' unit and woke them up. After this incident and the written complaints about the number of times the tenant banged on the ceiling the landlord gave the tenant a Notice to End Tenancy.

AS testifies that the tenant has been complaining about the upstairs tenants from 2007 to 2010; AS states he would go to the tenants unit to listen for any noise. AS testifies he went to the tenants unit at least six times. Eventually AS testifies he told the tenant to come and knock on his door if the noise resumed and he would go to her unit then to hear the noise. AS testifies the tenant complained that the tenants above were using some kind of machinery but when he went to investigate in their unit there was no evidence of any machinery. AS testifies he never heard any noise from the tenants above on any of his visits to this tenants unit.

AS testifies that he again went to the tenants unit in 2010 after resuming his position as supervisor in the building; AS testifies on this occasion he saw a stick with a rubber tip and

observed marks on the tenants ceiling. The tenant admitted to AS that she would bang on the ceiling.

The JF testifies that she spoke to the tenant on February 16, 2010 and tried to book an appointment to visit the tenant but the tenant refused. JF testifies that the tenant informed her that the tenants above were banging pots and pans and throwing meat and a meat cleaver in their sink, pots were taken out on their balcony and dropped, the upper tenants hold church services in their unit and the tenant can hear children in their unit jumping off furniture. JF testifies that the tenant declined to have her visit her unit and declined to document dates and times she states she has been disturbed.

The JF testifies that the tenant called her office and left five messages to be transferred and when a co-worker followed up on the tenant they got the same results with the tenant insisting on a transfer and her refusal to document her concerns. JF testifies that in January, 2011 they arranged a meeting with the tenant in the office and the tenant indicated that the noise was continuous for 24 hours a day. When the tenant was asked why the landlord could not go into her unit to hear the noise the tenant replied that the people upstairs know when she has people in her unit and they stop making noise. The tenant also told them that her daughter had never heard any noise in her mother's unit.

The landlord testifies that on August 04, 2011 she received a call from the tenants upstairs to inform the landlord that they had been woken twice by the police in the middle of the night. The landlord testifies that she spoke to the police about a possible harassment charge against the tenant and the police indicated that they had been called out by the tenant in January and July, 2011.

The landlord testifies that after the police had been called out again in December, 2011 the police indicated to the landlord that they are willing to proceed with a mischief charge against the tenant if the upstairs tenants are willing to file a complaint against the tenant. The landlord testifies that at this point the tenant was served with the Notice to End

Tenancy for cause. The landlord requests that the Notice to End Tenancy is upheld and seeks an Order of Possession for February 29, 2012.

The landlord calls her witnesses which is the tenant living upstairs and the tenants daughter who is acting as an interpreter for her mother. The witness testifies that the building is a wood frame building and sound does carry. The witness states they do not make noise other than normal living noise and have taken steps to reduce this by limiting the times their grandchildren visit, ensuring they close doors quietly and with the female tenant staying nights at her daughter's house.

The witness testifies that the tenant below has called the police out to them on three occasions twice at 01.00 a.m. and once at 11.00 p.m. The witness testifies that her parents are elderly and are in bed at that time of night. The tenant downstairs would pound on the ceiling and after the downstairs tenant got a letter from the landlord this became worse and she would also bang doors and the balcony door. Some days the banging would go on over many hours. The witness testifies that the tenant below is harassing them and disturbing their right to quiet enjoyment. The witness states there has been no more banging through January 2012 but now other noises have started. The witness states she loves her home but the downstairs tenant makes them miserable and unhappy.

The tenant declines to cross examine the landlord witness.

The tenant testifies that she has lived in her unit for five years and has always experienced noise from the tenants upstairs. The tenant testifies that these tenants have lots of company visiting them and when they go out onto their balcony they throw water off the balcony and jump around on the floors. As they have a tiled floor it makes noise in the tenants unit. The tenant testifies that she went to her doctor many times and has provided doctors notes requesting that she should be transferred to another unit. The tenant testifies that when she complained about the noise the landlord did not want to know. The tenant agrees that the

building manager came to listen for noise but there was no noise taking place at that time. The tenant states you have to live in her unit to be able to experience the noise issues.

The tenant calls her witness who testifies that he has known the tenant for many years and testifies that he has heard noise in the tenants unit. The witness states it sounds like children running and jumping, feet pounding on the floor upstairs and water being thrown off the balcony. The witness testifies that they did bang on the ceiling a few times when this happened. The witness testifies that he is back and forth to the tenants unit most days and has heard noise from upstairs.

The landlord declines to cross examine this witness.

The tenant testifies that the landlord would not give her a transfer to another unit and the tenant agrees she did want to stay in this building but is now willing to transfer to any other building. The tenant testifies that there were units' available on the top floor but the landlord gave them to other tenants

The tenant agrees she did bang on the ceiling a few times in the day time and agrees she did call the police because the upstairs tenants were making noise late at night. The tenant testifies that on one occasion the male tenant from upstairs was jumping on his balcony and when the tenant asked him to be quiet he told the tenant to F**K Off.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regard to the reasons given on the Notice to End Tenancy; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the

burden of proof. The landlord has provided a copy of warning letters, a letter from the Ombudsman, previous file numbers and statements. The landlord has shown that they acted expediently to resolve the tenants concerns about the alleged noise from the tenants living above this tenant. From the evidence provided both documentary and verbally I find the landlords responded appropriately to the tenants complaints and due to the tenants lack of cooperation the landlords were unable to verify the tenants complaints.

I further find the landlords have shown that the tenant has in fact disturbed the tenants living in the unit above hers by repeatedly banging on the ceiling with a stick and calling the police out to investigate alleged noise on at least three occasions causing distress and waking the tenants living upstairs. The landlord did initially agree to move the tenant to another top floor unit when one became available but in the light of the tenant's actions in ignoring the landlords warning letters a One Month Notice to End Tenancy was served upon the tenant instead.

We are not here today to resolve the tenant's issues about noise or the tenant's issues that she was not transferred to another rental unit by the landlord. Those issues were dealt with at a previous hearing and the tenant's application at that time was dismissed.

It is my decision that the landlord has provided sufficient evidence to support the reasons given on the One Month Notice to End Tenancy and I am satisfied that the tenant has caused a significant and unreasonable disturbance to the tenants living above her unit. A landlord has an obligation to protect the rights of these tenants to quiet enjoyment of their rental unit pursuant to s. 28 of the *Residential Tenancy Act (Act)*, consequently, the tenants application to cancel the One Month Notice to End Tenancy is dismissed and the landlord has been issued with an Order of Possession pursuant to s. 55 of the Act.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **February 29, 2012**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: February 02, 2012.

Residential Tenancy Branch