



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FF

Introduction

The tenants applied under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”), and to recover the filing fee.

The tenants and the landlords were present at the hearing. The landlords had two witnesses who were also present at the hearing. At the start of the hearing I introduced myself and the participants. Evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

Both parties confirmed receipt of the evidence packages and confirmed having had an opportunity to review the evidence from the other party.

Issues to be Decided

- Should the Notice be cancelled?
- Should the applicant tenants recover the filing fee?

Background and Evidence

A copy of the written tenancy agreement was submitted as evidence prior to the hearing. According to the agreement, a fixed term tenancy began on April 1, 2012 and is scheduled to expire on March 31, 2013. Rent in the amount of \$1,000.00 is due on the first day of the month. The tenants paid a security deposit of \$500.00 at the start of the tenancy.

The tenants were served with the Notice dated July 31, 2012, with an effective date of August 31, 2012. The tenants disputed the Notice on August 2, 2012 in accordance with the *Act*.

Once a tenant disputes the Notice in accordance with the *Act*, the burden of proof falls to the landlords to prove the cause alleged in the Notice. The Notice states the cause as the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlords presented two witnesses who provided oral testimony during the hearing. The first witness who lives below the tenants stated that he has sent between 3 and 5 emails to the landlords complaining of the noise from the applicant tenants unit. The witness described the noise as "jumping and stomping" and that the noise would pick up between 1:00 p.m. and 2:00 p.m. The witness also stated that the applicant tenants attempted to record his conversation on August 24, 2012, in regards to the complaint of the noise. A tenant responded by confirming she did attempt to record the conversation as evidence but did not yell or swear and that she knocked on the door of the witness.

The second witness, the strata manager, affirmed that she has received a telephone complaint from the tenants in the unit below the applicant tenants on August 22, 2012. In that telephone complaint, the female tenant stated that the noise stemming from the unit of the applicant tenants is affecting her life as she is a nurse and works shift work. The second witness stated that the complaint involved the actions of those in the unit above them causing items to shake in their unit and that she was unable to sleep through the day. The second witness said that the male applicant tenant apologized to the tenants downstairs by stating that their youngest son has "heavy feet." The second witness for the landlord referred to a strata bylaw regarding noise and is awaiting a written complaint from the tenants below the applicant tenants, which will be presented to the strata council to consider for the imposition of fines. The second witness confirmed that she has not yet received a written complaint from the downstairs tenants.

The tenants confirmed that they have two children, a boy who is almost three years old, and a daughter who is five years old. The tenants evidence is that they were very surprised by the Notice as they have not received any written warnings stating that others are complaining and that they may be evicted due to the alleged noise. The landlords confirmed that they have not sent a written notice to the tenants to date warning them to reduce the amount of noise due to the impact it is having on other tenants.

Both parties disputed the testimony of the other party in terms of verbal warnings. The landlords testified that they have repeatedly warned the tenants that noise from their unit is disturbing other tenants, and went so far as to offer them assistance in finding a new rental property after receiving complaints from other tenants and the strata manager. The tenants disputed the landlords' testimony by stating that the landlords have not warned them verbally or in writing, although the tenants did confirm having a conversation with the downstairs tenant about the noise, and a follow up conversation with the female landlord afterwards, where the female landlord praised the tenants for approaching the downstairs tenants regarding the noise.

The landlords stated that they have been trying to work with the tenants to find another rental property due to the ongoing complaints, and have forwarded many listings to the tenants. The landlords stated that a majority of those listings are still available.

The tenants stated that they met with the landlords before entering into the tenancy and were told the building was a "great family building" as there were several other families

with children there. The tenants also testified that their children are in childcare outside of the rental unit Monday to Friday from 8:00 a.m. to 5:30 p.m., which was not disputed by the landlords.

Both parties were asked whether the building was a wood structure or made of concrete, or a combination thereof. One party stated the building was wood, while the other party described the building as made of concrete.

The landlords stated that other tenants may leave the building if the noise continues, and wanted the tenants to vacate as a result. The landlords verbally requested an order of possession, should the application of the tenant be dismissed.

Analysis

Based on the documentary evidence, the oral testimony of the parties and the witnesses and on the balance of probabilities, I find the following.

The burden of proof to prove that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord falls on the landlords as the tenants disputed the Notice for Cause. The landlords provided a summary of events in relation to the alleged noise and two witnesses who describe complaints about noise, however, the landlords testified that they have not written to the tenants to advise them formally of the noise complaints or have advised the tenants in writing to warn them that if steps are not taken to address the noise, they may face eviction.

I find that the landlords have failed to meet the burden of proof by proving that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords. I accept that the landlords were aware that the tenants had two small children before entering into a fixed term tenancy, based on the undisputed testimony of the tenants in relation to their meeting prior to the start of the tenancy. I would expect at the very least, that the landlords would have provided written notice to the tenants advising of complaints from other tenants which may impact their tenancy.

Based on the balance of probabilities, and the noises being described as jumping and stomping, the building is likely a wood structure as noise transfer between floors in a concrete building is much less likely.

I accept that the tenants or their children have been creating some noise, however, in a wood structure building where there are multiple tenants living above and below each other, it is anticipated that there will be noise on occasion and where there are children, it is expected that those children will make noise. I find that the sound of children running, stomping or otherwise playing is not considered significant interference or unreasonable disturbance when the sound happens during the day. The witness living below the tenants, did not testify that the sound has disturbed him during the night or at unreasonable times. There was testimony provided that the nurse living below could not sleep due to the noise during the day, however, based on the tenants undisputed

testimony, the tenants' children are in childcare outside of the residence Monday to Friday, from 8:00 a.m. to 5:30 p.m. If an occupant living downstairs is a shift worker, I find that at the very least, the shift worker would submit a written complaint about their concerns which according to the second witness, has not been completed to date.

The right to quiet enjoyment extends to both landlords and tenants, however, temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. As mentioned above, I find the tenants or their children have created some noise, however, the evidence provided does not constitute anything more than temporary discomfort or inconvenience from the sounds that have been described. For a noise to be considered unreasonable, evidence would have to be provided to prove the noise occurred at an unreasonable time of day, for an unreasonable length of time and for unreasonable noise, for example, banging on a drum or jumping on a pogo stick as just two examples. The noise from children playing during the day is not unreasonable noise.

Given the above, **I cancel** the Notice due to insufficient evidence from the landlords to prove the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. **I find** that the tenancy continues until ended in accordance with the *Act*.

As the tenants were successful in their application, **I grant** the tenants the recovery of the \$50.00 filing fee. **I authorize** the tenants to deduct \$50.00 from the next month's rent that is due in full satisfaction of their claim.

Conclusion

I cancel the 1 Month Notice to End Tenancy for Cause.

I find the tenancy continues until ended in accordance with the *Act*.

I authorize the tenants to deduct the filing fee of \$50.00 from the next month's rent.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 4, 2012

Residential Tenancy Branch