



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNC, FF

For the landlord – OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel the Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application. The landlord applied for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness 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. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy set aside?
- If not is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agree that this tenancy started on April 05, 2013. This is a fixed term agreement which is due to expire on June 30, 2014. The tenants pay a monthly rent of \$1,650.00 on the first day of each month.

The landlord testifies that they have received numerous complaints from the tenants living upstairs concerning noise from these tenants basement unit. The landlord testifies that on the first day these tenants moved in it was reported to the landlord that they had a big fight. The landlord's father went to speak to the tenants about this and was assured by the tenants that it would not happen again. The landlord testifies that the noise from the tenants unit has continued with fighting and screaming, the tenant's daughter plays loud music late at night and the tenants bang doors late at night. The landlord testifies that he has received e-mail complaints from the tenants living upstairs who complain that all this noise prevents them sleeping and disturbs their life.

The landlord testifies that the landlord sent a realtor to the house and the realtor informed the landlord that the house smelt of marijuana. The landlord testifies that he has also smelt marijuana in the house when he has been to talk to the tenants. The landlord testifies that the male tenant invited the landlord to a hockey game and then offered the landlord some marijuana. The landlord testifies that this is a non smoking house and the realtor told the landlord that this sort of thing would devalue this two million dollar home.

The landlord testifies that after an incident with the tenant's daughter playing loud music the tenant's daughter left a note for the upper tenants apologising for the noise and stated that it would not happen again. However the loud music has continued as the tenant's daughter practises dance in the unit.

The landlord's witness who is the landlord's father testifies that the day the tenants started to move in they had a fight the night before with their daughter in the unit. The

witness testifies that the tenant's daughter plays loud music late at night and he has had complaints on behalf of the landlord from the upper tenants. The witness testifies that he asked the tenants to stop the noise and the male tenant said it would stop. The witness testifies that he understands that the tenant's daughter left a note for the upper tenants and when the male tenant found out he got into a fight with the daughter. The witness testifies that the male tenant had informed the witness that they had a problem with the daughter and the witness testifies that he said that this was not his concern but they have to be respectful of the upper tenants because they have to get up for work in the mornings.

The witness testifies that during one conversation the male tenant said as they rent the basement suite he wants to be able to enjoy it and use the garden at night. The witness testifies that the upper tenants will start to send the witness and landlord e-mails concerning the noise as it occurs.

The tenants decline to cross examine this witness.

The tenant NF testifies that what the landlord is saying is completely false. NF testifies that the upper tenants do not go to bed early as NF can hear them in their unit walking around urinating in their toilet and flushing the toilet. NF testifies that she goes to bed early as she has to get up for work. NF testifies that her daughter is a 14 year old and there was only one incident where the daughter turned her music up too loud at 7.00 p.m. but she felt bad about it when the upper tenants banged so she turned it off and wrote the upper tenants a letter of apology. NF testifies that her daughter no longer plays music or practises her dancing.

NF testifies that the insulation between the units is very poor. The sound travels between each unit and the tenants do not make anything more than normal living noise. NF testifies that she has approached the upper tenants to try to resolve their issues but they will not take part in any resolution.

The tenant GM testifies that no one smokes in their home. GM testifies that no one smokes marijuana either. GM refers to a letter provided by his doctor in evidence which states that GM has asthma and does not smoke and cannot tolerate second hand smoke. The tenant denies offering the landlord any marijuana and states this is completely false.

The tenant NF testifies that they feel that the tenants upstairs cannot tolerate any normal living noise and because they pay the landlord such a high rent the landlord is trying to evict this family in order to keep the higher rental income. NF testifies that they are a normal family of three they do not engage in fights or screaming and although they have raised their voice occasional this is normal in any family. NF testifies that when some of these complaints have come into the landlord the tenant and her family has all been sleeping. NF testifies that in some of the complaints e-mails provided by the landlord from the upstairs tenants they refer to the washing machine being put on late at night. NF testifies that this is not true as she does not do washing late at night and they are asleep during these times indicated on the e-mails.

GM testifies that since they have lived there they have not been able to have friends over for dinner and their daughter has only had a friend over once for a sleep over. GM testifies that they are too worried about making noise to enjoy their home. Just this weekend they had the neighbors over for a drink and one of the neighbors commented that she could hear the tenants upstairs thumping across their floor. GM testifies that they hear the tenants upstairs all the time but as it is normal living noise they do not complain to the landlord.

The landlord witness rejoins the hearing to talk about the insulation between the units. The landlords witness testifies that this is a legal suite and complies with the City code regarding insulation.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. In this matter, the burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The landlord was not able to provide any independent evidence to support his version of events. The landlord has provided some e-mails from the upstairs tenants outlining the noise they claim disturbs them however the landlord did not ask these other tenants to appear at the hearing to provide sworn testimony or submit to cross examination by the tenants. I find as is often the case that the noise transference is as a result of two separate families living in one home making normal living noise. Consequently, this is not sufficient grounds to end a tenancy as the landlord has provided no other corroborating evidence that the noise experienced by the upstairs tenants is more than normal living noise and not that those tenants are particularly sensitive to noise.

With regard to the landlords claim that the tenants smoke cigarettes or marijuana in the unit; the landlord's case is entirely dependent on his version of events, a version which is disputed by the tenants and supported by a letter from one of the tenant's doctor. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy on either of the grounds indicated on the One Month Notice and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The landlord application is dismissed in its entirety without leave to reapply.

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated May 22, 2013 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, the tenants are entitled to recover the \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: June 20, 2013

Residential Tenancy Branch

