



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT, SS, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy; for authority to serve documents in a manner that is not authorized by the *Residential Tenancy Act (Act)*; and to recover the cost of filing an Application for Dispute Resolution.

At the outset of the hearing the Tenant withdrew the application for authority to serve documents in a manner that is not authorized by the *Act*.

As the Tenant disputed the Notice to End Tenancy for Cause within ten days of receiving it, which is within the legislated time period, there is no need to consider the application for more time to apply to set aside a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The male Tenant stated that on August 07, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The male Tenant stated that on September 23, 2014 an additional 2 pages of evidence were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Landlord submitted no evidence prior to the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 15, 2011.

The Landlord and the Tenant agree that on July 24, 2014 a One Month Notice to End Tenancy for Cause was personally served to the female Tenant, which declared that the Tenant must vacate the rental unit by August 30, 2014. The reasons cited on the Notice for ending the tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the Tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant.

The Landlord stated that the second reason for ending the tenancy was selected in error, and he is simply trying to end this tenancy as a result of noise. Specifically, he is attempting to end the tenancy as a result of noise made by the Tenant's children.

The Landlord and the Tenant agree that there is a suite below the rental unit and noise transfers between the units. The parties agree that the occupants of the lower rental unit recently moved because of the problem with noise.

The Landlord stated that the previous occupants of the lower rental unit also moved because of the problem with noise. The male Tenant stated that these occupants had concerns about noise but the primary reason for their move was because they were moving to another country.

The Landlord stated that prior to the Tenant having children there were a few reports of noise from several occupants living in the rental unit. He stated that since the Tenant had children the noise complaints have increased significantly, as a result of the older child running and screaming.

The male Tenant acknowledged that his older child occasionally runs and has tantrums, and that they try to limit those disturbances. He stated that he is very aware of the problem with noise and agreed to have carpets installed to limit the noise transfer between the units.

The male Tenant stated that there is little insulation between the rental unit and the lower suite and that he can hear conversations in the lower suite. The Landlord stated that there is insulation under the kitchen floor; there is no insulation or sound barrier under the other floors; there is no legal requirement for sound proofing or insulation between the floors; and it would be very expensive to add insulation or sound barrier between the units.

The Tenant submitted a letter from a former occupant of the lower suite, in which the author declared that there is a lack of sound insulation between the units; that the Tenant is no louder than “the average family”; and that the noise the Tenant makes is “reasonably expected from everyday living activities”. She declared that crawling or walking that “was nearly inaudible in the upstairs unit” was “amplified to an extremely loud noise downstairs”.

Analysis

Section 47(1)(d)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided insufficient evidence to show that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In my view, noise created by normal daily activities cannot be considered an unreasonable disturbance, including noise created by children who are acting in a manner that is typical of their ages. I find that to be particularly true in these circumstances, where the Tenant is making reasonable efforts to control the behaviour of their children and the Tenant is cooperating with the Landlord by using carpets in an attempt to reduce the noise levels. In reaching this conclusion I was heavily influenced by the letter from a former occupant of the rental unit, who declared that the Tenant is no louder than “the average family”; and that the noise the Tenant makes is “reasonably expected from everyday living activities”.

On the basis of the evidence before me, I find that the problem with noise in this residential complex is primarily the result of the construction of the complex, rather than the behaviour of the Tenant. In reaching this conclusion I was particularly influenced by the letter from a former occupant of the rental unit, who declared that the crawling or walking that “was nearly inaudible in the upstairs unit” was “amplified to an extremely loud noise downstairs”. As the noise disturbance is not primarily related to the behaviour of the Tenant, I find that the Landlord does not have the right to end the tenancy for this reason.

While there may be no legal requirement for the Landlord to provide sound barriers between the rental units, the Landlord simply does not have the right to end a tenancy as a result of a deficiency with the residential complex.

I find that the Tenant’s Application for Dispute Resolution has merit and that the Tenant is entitled to recover the \$50.00 paid to file this Application.

Conclusion

As I have determined that the Landlords have submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(2)(d)(i) of the *Act*, I set aside the One Month Notice to End Tenancy and I order that this tenancy continue until it is ended in accordance with the *Act*.

As I find the Tenant's application has merit, I authorize the Tenant to deduct \$50.00 from one rent payment, as compensation for the fee paid to file this Application for Dispute Resolution.

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: October 07, 2014

Residential Tenancy Branch

