



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness provided no evidence.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order that the landlord comply?

Background and Evidence

The tenancy started on April 1, 2015. Rent of \$600.00 is payable monthly. On July 20, 2015 the Landlord posted a one month notice to end tenancy for cause (the “Notice”) on the door of the unit. The reason stated on the Notice is 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.

The Landlord states that the tenant living below the Tenant has complained that he is constantly being disturbed by banging from the upper Tenant's unit. The Landlord states that this has happened on various occasions but cannot say when as the complaining tenant has not provided any dates for the noise. The Landlord states that on July 18, 2015 this lower tenant was upset with the Tenant's constant pounding on his ceiling and responded by tapping the ceiling back. The Landlord states that this tenant's friends have also witnessed the noise but he has no idea who these friends are. The Landlord states that the lower tenant was supposed to attend the hearing but did not.

The Tenant denies making loud noises and states that any noises that do come from her unit are from her toddler dropping toys or falling down. The Tenant states that the police were called because the lower tenant started calling the Tenant names and was banging on his ceiling again. The Tenant states that on July 19, 2015 she complained to the Landlord about the day's previous banging by the lower tenant and that the Landlord responded by serving the Tenant with an eviction notice.

The Landlord states that when the police came they suggested to the Landlord that the Tenant should be evicted. The Landlord states that the police also told the Landlord that if there were any further problems to call the police as the police could better deal with the situation than the Landlord.

The Tenant states that the tenant below previously complained once about the Tenant and the Tenant got an eviction notice. It is noted that this notice was disputed and subsequently cancelled. The Tenant states that she has complained several times about the lower tenant's behavior and the Landlord responded with an eviction notice. The Tenant states that the Landlord never put anything in writing about the basis for the eviction notice and has done nothing to resolve the disruption to the Tenant's right to quiet enjoyment. The Tenant asks for an order that the Landlord stop serving her with

eviction noises and an order that the Landlord respond to the Tenant's complaints of noise from the lower level.

The Tenant states that the lower tenant started banging on his ceiling at the beginning of July 2015 as soon as it was known that the Tenant was successful in cancelling the previous eviction notice. The Tenant states that the lower tenant would consistently bang on his ceiling on a daily basis between 3:00 and 4:30 p.m. for the month of July 2015. The Tenant states that this noise has not stopped and that she has informed the Landlord both verbally and in writing of these noises but the Landlord has done nothing. The Tenant states that the Landlord simply tells the Tenant to call the police.

The Tenant states that when the police previously came and spoke with everyone, they told the Tenant that the lower tenant was using a skate board to bang on the ceiling. The Tenant states that contrary to what the Landlord states the police told the Tenant that there was little the police could do as this was a matter for the RTB. The Tenant claims \$100.00 for the loss of quiet enjoyment during July and August 2015. The Tenant also asks for an order that the Landlord comply with the Act in providing the Tenant with quiet enjoyment and an order that the Landlord stop issuing eviction notices.

The Landlord states that he spoke with the lower tenant in late July 2015 and that this tenant promised the landlord that there would be no more banging. The Landlord states no warning has been given to the lower tenant in writing, that "to his knowledge" no other complaints have been made by the Tenant and that no further action has been taken in relation to the Tenant's noise complaints.

Analysis

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. The Landlord has virtually no direct evidence of disturbance by the Tenant. The Landlord's Notice is based entirely on the complaints of

the lower tenant however there is nothing from this tenant and the Landlord clearly stated that it does not have any other details of the lower tenant's complaints. As a result and considering the Tenant's believable evidence that the noise from their unit is the result of normal living by persons with a toddler, I find that the Landlord has failed to substantiated that the Tenant did anything to significantly interfere with or unreasonably disturb another occupant or the Landlord. As a result I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Damages are not recoverable where the landlord has acted or has not been negligent in providing quiet enjoyment. While I accept that the Landlord spoke with the lower tenant and extracted a promise to stop the banging, I do not accept that the Landlord has not been informed of further banging since then. I found the Landlord's evidence on this point to be evasive and convenient. I found the Tenant's evidence of disturbance since the end of July 2015 to be highly believable. I find therefore that the Tenant has substantiated that since the end of July 2015 the Landlord failed to carry out any reasonable act to address the Tenant's loss of quiet enjoyment and I find that the Tenant is therefore entitled to compensation of **\$100.00** for being subjected to noise from the lower tenant.

As this is the second baseless notice to end tenancy for cause issued by the Landlord and noting that it was issued within a month of the previous hearing, I find that the Tenant has substantiated that the Landlord has acted negligently in carrying out his obligations to provide the Tenant with freedom from such disturbance. I therefore order the Landlord to cease issuing baseless notices. Should the Tenant receive another baseless notice I give the Tenant leave to reapply for compensation in relation to the actions of the Landlord in issuing the first two baseless notices.

As the Tenant has been successful with the application I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$150.00**. The Tenant may reduce future rent payable by this amount in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$150.00**. If necessary, this order may be filed in the Small Claims 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: September 25, 2015

Residential Tenancy Branch

