



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF, O

Introduction

This hearing convened as a result of a Tenant's application for Dispute Resolution filed October 20, 2015 in which the Tenants seek to cancel an a 1 Month Notice to End Tenancy for Cause issued October 20, 2015 (the, "Notice"); and to recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a Tenant has applied to cancel a Notice for Cause Residential Tenancy Branch Rules of Procedure require the Landlord to provide their evidence submission first, as the Landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated as follows: this fixed one year tenancy began on March 1, 2015; monthly rent was payable in the amount of \$850.00 and the Tenants paid a security deposit of \$425.00.

Paragraph 16 of tenancy agreement provides as follows:

16. CONDUCT: The tenant or the tenant's guests must not carry out any illegal activity, create noise, annoy, interfere with or otherwise disturb the quiet enjoyment of another tenant, occupant, neighbour, or the landlord: nor must any noise or disturbing behaviour be repeated after a reasonable request from the landlord to cease such noise or behaviour. In particular, the tenant or the tenant's guests must avoid loud conversation or other noisy or disturbing behaviour between the hours of 10:00 p.m. and 9:00 a.m. If the behaviours of the tenant or the tenant's guests is in violation of this clause causes another tenant to vacate his or her rental unit the tenant will be responsible for any resulting costs or losses incurred by the landlord.

The Landlord testified that in August of 2015 the building manager, J.F. began receiving complaints from other occupants of the rental building of the Tenants yelling and screaming. The Landlord stated that at this time, J.F. spoke with the Tenants about these complaints.

In September the Landlord received written complaints from other occupants about noise coming from the rental unit. Introduced in evidence were letters from D.C. (the renter directly below the subject rental unit) dated September 6, 2015 and a letter dated September 7, 2015 from another renter on the same floor as the rental unit.

The Landlord testified that on September 7, 2015 further complaints were received about the Tenants. This was also the same day that the police attended the rental unit due to noise complaints.

On September 8, 2015 the Landlord sent the Tenants a final warning letter. A copy of the letter was introduced in evidence.

On September 12, 2015 J.F. received another complaint about the Tenants yelling and screaming. He again spoke to the Tenants about the complaints and their behaviour.

On October 20, 2015, the renter, D.C. wrote another letter about the noise from the subject tenancy. In this letter D.C. wrote as follows:

"Several weeks ago I wrote a letter to make a noise complaint about my neighbour in [rental unit]. Over the time interval there has been some improvement but the noise in the evening and, especially, in the early morning hours is still intolerable. Normally starting around 11 pm there is banging and jumping as an example that continues until 4 am or 5 am on average. The noise at this time makes it impossible to sleep. Please do something about the noise coming from [rental unit]."

On the same day, October 20, 2015 the Landlord issued the Notice. The reasons noted on the Notice were as follows:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and

- breach of a material term that was not corrected within a reasonable time after written notice to do so;

The Landlord testified that when the Notice was served on the Tenants, M.C., tore up the Notice and dropped it on the floor in front of the building manager.

Also introduced in evidence was a note from the Building Manager dated November 3, 2015 wherein he writes that after serving the Notice Apparently the Tenant M.C. informed the building manager that he was “up late training until 4:00 a.m.”. The Landlord stated that he understood the Tenant, M.C. was up late doing weight training and exercises.

Constable M. testified on behalf of the Landlord. He stated that one of his duties was in relation to the Crime Free Multi Housing program between the police and property managers. He provided evidence with respect to the police involvement with the subject rental unit. He stated that on September 7, 2015 at 3:34 p.m. the Police responded to a noise complaint. When police arrived on scene they spoke to the complainant (another tenant) and the complainant indicated a voice could be heard yelling. They spoke to the Tenant M.C. and he admitted he was yelling and screaming because of a notice he had received. Constable M. stated that M.C. was cooperative and the police left.

In the Tenants’ application they note that while they are aware they have had “noise complaints” the Landlord has never told them what noise is problematic. In response to this claim the Landlord stated that the building manager spoke to them on several occasions such that they were aware of the nature of the complaints. He also stated that working out with weights until 4:00 a.m. is not indicative of someone who is mindful of the others in the building. Finally, he stated it was incredulous that the police would attend and not tell the Tenants the nature of the complaints/concerns.

The Tenant S.B. testified on behalf of the Tenants.

She stated that she was aware of the noise complaints but denied “half of them”.

S.B. also stated that she understood that the first complaint in August 2015 was about shouting and screaming “from people who were living on the other side of the building”. She said that there was no shouting or screaming and that in fact it was sound coming from video games she and the other Tenant, M.C., were playing, and when the Landlord talked to them about this they agreed to put on headphones to minimize the sound.

S.B. initially stated that it was not possible that “people on the other side of the building could hear their video games”; she then posited that it may be because the building was in a shape of an L and they had their windows open because it was summer and very hot.

S.B. confirmed that they received a further noise complaint on September 6, 2015. The Tenant explained that they were not making any specific noise at night. The Landlord said that the

Tenant M.C. did not tell the manager that does “training” till 4:00 a.m. rather he said he does “trading” as that is when the markets are open.

She also stated that the manager told them that the “person underneath” was complaining of jumping/banging at night. She said this was not possible as at most the renter below could hear them at their computers. She confirmed that she and the other Tenant are into bodybuilding but train at a gym outside the rental building and that they have no dumbbells, or exercise equipment in the rental unit.

The tenant admitted that she and M.C. had some “fights” and stated that it happened “two-three times since they moved in” She admitted that her boyfriend M.C. was yelling during these occasions and said that aside from this, the only other noise coming from their rental unit was video games.

S.B. stated that she understood that the previous tenant in the rental unit was an elderly man who was very quiet. She said that she believes the renter below the subject rental unit is sensitive to sound.

Finally, S.B. stated that there is a lack of soundproofing as she and M.C. hey hear the tenants above and their child running around.

Analysis

After considering all of the written and oral submissions submitted at this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- breached a material term of the tenancy agreement that as not corrected within a reasonable time.

In this case the Tenant had been verbally warned by the Landlord on numerous occasions, including a written warning.

I accept the Landlord’s evidence that the nature of the complaints was due to the Tenants arguing, yelling and screaming. I am persuaded by the letters submitted in evidence by the Landlord that the Tenants’ behaviour is disturbing other renters. It is also notable that the police have attended due to the Tenants’ disturbing behaviour.

The Tenant, S.B., admitted that she and M.C. fought approximately 2-3 times and that on those occasions he was yelling. I do not accept S.B.’s evidence that the noise came from loud video games.

In the Tenant's Application they admit that they do not have a regular work schedule such that they are up later than most people. Despite this, they agreed, pursuant to the residential tenancy agreement and in particular clause 16 that they would "avoid loud conversations or other noisy or disturbing behaviour between the hours of 10:00 p.m. and 9:00 a.m." I find that in disturbing other renters in the early morning hours, they are in breach of clause 16.

In this case, the reason the notice was issued was the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find the Tenants were provided sufficient warnings by the Landlord's agent to correct this behaviour. The Tenants continued to unreasonably disturb the other occupants in the rental despite these warnings.

Therefore, I dismiss the Tenant's application to cancel the Notice; therefore, the tenancy ends in accordance with the Notice.

Conclusion

The Tenants application to dismiss the Notice is cancelled. The tenancy ends in accordance with the Notice.

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: December 18, 2015

Residential Tenancy Branch

