



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RLB HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated January 27, 2016 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, RR ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the property manager for the rental building and that he had authority to speak on behalf of the landlord company named in this application as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application and the tenant was duly served with the landlord's written evidence. The landlord confirmed that although he received the tenant's written evidence late, less than 7 days prior to this hearing, he had reviewed it, was prepared to respond to it, and wanted to proceed with this hearing. Accordingly, I proceeded with the hearing and considered the tenant's written evidence at the hearing and in my decision.

The tenant confirmed receipt of the landlord's 1 Month Notice on January 28, 2016, after the landlord said he posted it to the tenant's rental unit door on January 27, 2016. In accordance with sections 88 and 90 of the *Act*, I find that that the tenant was duly served with the landlord's 1 Month Notice on January 28, 2016.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the landlord company name, as the landlord consented to this amendment request by the tenant.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on July 1, 2015. Monthly rent in the amount of \$830.00 is payable on the first day of each month. A security deposit of \$420.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was not provided for this hearing, although both parties confirmed they signed one. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of February 28, 2016, for the following reason:

- *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 stated that he has been a property manager in this rental building for 31 years. He said that it is a crime-free multi-housing building and that reference checks are completed on potential tenants prior to tenancy. He noted that it is a quiet building, no parties are allowed and there are quiet hours between 11:00 p.m. and 9:00 a.m. The landlord said that the tenant comes home late, has friends come over to his rental unit and they talk, scream and laugh really loudly in the unit and on the balcony during late night hours. The landlord said that he has received multiple complaints from other tenants in the rental building, including the tenant living directly beside the tenant's unit, who has been there for three years, and directly above the tenant's unit, who has been there for sixteen years. The landlord provided two complaint letters from each of these two tenants, from December 2015 and January 2016. The landlord provided a letter from the landlord to the tenant from November 30, 2015, warning about this behaviour.

The letters document the tenant talking loudly in his unit during late night hours. The landlord said that the noise travels because it is a wood-frame building and that the tenant is better suited to a concrete building for this reason. The landlord said that despite verbal and written warnings to the tenant, he continues with the same behavior.

The landlord said that the police were called on January 30, 2016, in response to noise complaints at the tenant's rental unit. The landlord provided an incident report from January 30, 2016. The tenant provided a written synopsis from the police, who were unable to release the file, which indicates that the police were called to the tenant's rental unit on January 30, 2016, regarding "noise, loud music and loud talking" and that "upon police attendance, it was noted that there was no music or unreasonably loud talking/noise coming from the suite. Officers apologized to the tenants for bothering them. Our file was concluded without any Police action required."

The tenant confirmed that he is a truck driver, his shifts are unsteady, and he gets home late from work. The tenant said that he has friends come over to his rental unit and that he is just talking to them, not doing anything wrong.

Analysis

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on January 28, 2016, and filed his Application on February 2, 2016. Therefore, he is within the time limit under the Act. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord failed to show that the tenant or other occupants permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, a landlord must balance its responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the Act. Living in a wood frame building causes greater noise transmission than a concrete building. Perhaps better insulation or soundproofing is required by the landlord to help minimize or reduce noise transmission in this rental building. I find that the tenant is free to have guests over at his rental unit and is entitled to quiet enjoyment of his unit, including talking and laughing with his friends even though this may be happening during late hours because the tenant works odd shifts during the day. The tenant even produced a police synopsis indicating that there was no music, unreasonably loud talking or noise coming from the tenant's rental unit, requiring no further police action. I find that the evidence produced by the landlord, including letters from

neighbouring tenants, did not demonstrate significant interference or unreasonable disturbance against these other tenants or the landlord.

Therefore, I allow the tenant's application to cancel the landlord's 1 Month Notice, dated January 27, 2016. I find that the landlord is not entitled to an order of possession for cause. The landlord's 1 Month Notice, dated January 27, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this Application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice, dated January 27, 2016, is allowed. The landlord is not entitled to an order of possession. The landlord's 1 Month Notice, dated January 27, 2016, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from future rent at the rental unit in full satisfaction of the monetary order awarded at this hearing for the filling fee.

The tenant's Application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply. I find that this portion of the tenant's Application is not required, as the tenant said it only related to the 1 Month Notice, and I have made findings regarding the notice above.

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: March 22, 2016

Residential Tenancy Branch

