



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 2, 2016
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on May 5, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 2, 2016?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on May 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$1650 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$825 at the start of the tenancy.

The Notice to End Tenancy relies on section 47(1)(d)(i) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has
(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

The landlord seeks to end the tenancy based on the following:

- The tenant is continually complaining about noise from the children of the tenants in the two lower suites.
- The noise complained about is normal user. It involves one infant child who wakes up from time to time because of teething and other health related issues. The other basement rental unit has two young boys who are behaving in a normal fashion.
- The tenant has acted aggressively to the tenants in the two lower suites.
- The tenant has acted aggressively to the landlord threatening to bring a claim against her for breach of the covenant of quiet enjoyment.
- The landlord produced letters from the two downstairs tenants. One letter outlined her complaints and stated the tenant was threatening her and have her the impression she would physically attack her. The second letter states the tenant harasses her and screams at her children.
- The landlord testified that when she gets a complaint she feels obliged to talk it over with the downstairs tenants before doing anything.

The tenant disputes much of this evidence. She testified as follows:

- The tenant testified she works and has to get up before 6:00 a.m. to get ready for work.
- On many occasions her sleep has been disturbed by the children in the downstairs suites screaming at the top of their voice.
- She provided a letter which outlines 14 incidents from May 8, 2015 to April 30, 2016 of noise disturbances.
- She has told the landlord of these problems and the landlord fails to take steps to resolve the problems.

- She has written letters demanding the landlord do something and threatening to bring a claim for monetary compensation for breach of the covenant of quiet enjoyment.

Analysis:

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient cause to end the tenancy. The two downstairs tenants did not appear to testify at the hearing. Little weight can be given to their letters were the tenants solemnly affirmed evidence disputes much of it. It is not possible to assess whether the conduct of the Tenant amounts to a significant interference or an unreasonable disturbance in the absence of their testimony at the hearing. While I can appreciate the frustrations of the landlord I do not accept the submissions of the landlord that a tenant trying to assert their legal rights where there is a dispute between the parties' amounts to a significant interference or unreasonable disturbance.

This does not mean that I accept the submission of the Applicant that the noise amounts to a breach of the covenant of quiet enjoyment. Policy Guideline #6 includes the following:

“The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he **stands idly by** (my emphasis) while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

First, there is an issue as to whether the noise of children (even in the early hours of the morning when they are teething or because of ill health) amounts to an unreasonable disturbance. Secondly, it cannot be said that the landlord has stood idly by when the landlord responds and talks to the downstairs tenants. .

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I order that the Notice to End Tenancy dated May 2, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Normally, the successful party is awarded the recovery of the cost of the filing fee. However, in this case I determined the conduct of the Tenant has contributed to the service of the Notice to End Tenancy. I determined the Tenant is entitled to one half of

the cost of the filing fee. I ordered that the landlord pay to the Tenant the sum of \$50 (half of the cost of the filing fee) such sum may be deducted from future rent.

Conclusion:

In conclusion I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I ordered that the landlord pay to the Tenant the sum of \$50 such sum may be deducted from future rent.

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 05, 2016

Residential Tenancy Branch