



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC VILLAGE II C/O GATEWAY PROPERTY MANAGEMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein he sought to cancel a Notice to End Tenancy for Cause issued on June 9, 2016 (the "Notice")

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord's agent confirmed that nine pages of evidence submitted on July 18, 2016 were not provided to the Tenant. She testified that the evidence was not provided as that evidence included emails from other occupants of the rental building for whom she wished to provide anonymity. The Tenant, in not being provided this information, was denied the opportunity to know the contents of that evidence, the allegations therein, and the opportunity to respond and refute those allegations.

One of the principles of Natural Justice is that a party to a dispute has the right to know the nature of the dispute and the evidence to which they must answer. Accordingly, I decline to consider the nine pages of evidence submitted on July 18, 2016 by the Landlord.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a Notice to End Tenancy, the Landlord must present their case first as it is the Landlord who bears the burden of proving the reasons for issuing the Notice.

J.F. testified on behalf of the Landlord. She testified that the tenancy began on April 1, 2014. She confirmed that the rental unit is in a 40 unit apartment building.

J.F. testified that the Notice was issued due to a noise complaint by another renter in the building with respect to the Tenants vacuuming at 8:00 a.m. J.F. claimed that vacuuming is considered “excessive noise” and that this was in violation of the rental buildings noise restrictions between 10:00 p.m. and 9:00 a.m. She claimed this noise restriction was clearly provided for in the residential tenancy agreement. Notably, that agreement was not provided to me.

J.F. further stated that the Tenants were provided written notice of a noise complaint in May 2014. The letter which was apparently sent to the Tenants was not provided to me.

J.F. testified that the Tenants were provided another warning letter on April 7, 2015. That letter was not provided to me.

J.F. further stated that the next complaint the Landlord received from other renters was on January 28, 2016. She stated that the nature of this complaint was “general noise” in the evening. J.F. stated that due to the passage of time this was considered a “first complaint” and the Tenant was provided a warning letter at that time. Again, that letter was not provided in evidence.

J.F. stated that the renter who made the above mentioned complaints moved from the rental unit due to the noise from the subject Tenants. J.F. testified that a new tenant moved into the unit and the complaints continued.

J.F. testified that on May 10, 2016 the new tenant complained about noise from the rental unit at 6:00 a.m. including loud screaming, slamming of doors, loud music and stomping. J.F. testified that the Tenant was issued another warning on May 10, 2016, which she characterized as a “final warning” as she stated the letter informed the Tenants that if they received a further warning it would be accompanied by a 30 day eviction. Again that letter was not provided to me.

On June 9, 2016 the renter, A.B., again complained of the Tenants vacuuming and loud music. J.F. testified that she also received verbal complaints from the renters on either side of the

subject rental unit. J.F. confirmed that at this time the Tenants were provided a final warning and the Notice. This letter was introduced in evidence and included the following text:

“...

We have received a written complaint about the noise coming from your unit. The noise disturbances are in Breach of Conduct—Sections 17 of the Residential Tenancy Agreement, which clearly states:

- *The tenant or the tenant's guests must not disturb, harass or annoy the neighbors.*
- *Nor must this conduct be repeated or persisted after a request to discontinue was made by the landlord.*
- *The landlord may end the tenancy pursuant to the Act.*

As this is your 3^d noise complaint we have also attached a 1 Month Notice to End Tenancy.

...”

J.F. testified that they received another noise complaint the morning of the hearing on July 25, 2016. According to J.F. the complaint was about the Tenant vacuuming “very early”, before 8:00 a.m.

The Tenant, P.S., testified as follows. He stated that he was not aware that they were not permitted to vacuum before 9:00 a.m. and that at no time did the Landlord inform him of this prior to hearing J.F.’s testimony. He stated that they have received complaints about noise related to their young son walking on the floor above the below rental unit, but that they were never informed that vacuuming too early was a breach of their tenancy agreement.

In response to J.F.’s testimony P.S. stated that it has been difficult to address the Landlord’s concerns as they have never been provided specifics as to the nature of the noise issues. The Tenant also stated that the general complaints they have received are difficult to respond to as they are not aware of exactly what they are doing wrong.

He testified that he and his partner, the other Tenant, do not fight, or slam doors and that the noise likely originates from their young son’s activities. He stated that in July 2015 their son, E., learned to walk and is admittedly quite active; he speculated that the noise was likely their son, E. walking on the floor as the renter below had personally informed them that he could hear their son. P.S. confirmed that they open and shut doors more frequently than most, because they have to make sure their son does not get into rooms unattended, but denied slamming the doors.

The Tenant also stated that after they received the noise complaint they spoke with the renter below them about the noise. He stated that believes this renter was upset about the volume of a movie at that time.

The Tenant confirmed that he works from 6:00 a.m. to 2:30 p.m. most days except on Wednesdays when he works from 4:00 a.m. to 12:30 a.m. He confirmed that his schedule as well as their young son's means they are likely awake earlier than most other renters in the building. He stated that his partner is in bed by 9:00 to 9:30 p.m. and he is in bed by 10:30 p.m. at the latest due to his early working hours.

The Tenant confirmed that the only sound in the morning is their son watching children's shows while he eats his breakfast.

The Tenant stated that with a newborn baby they were up at early hours. He stated that they do not party and do not have friends over. He also said that they try to be quiet but they have a small child and he is active. The Tenant confirmed that their son can be loud and he sometimes jumps. He said that the sound from the people upstairs is also audible, but he knows this is part of living in an apartment building with many units.

Finally he stated that the new renter below is friends with the former renter and he suspects this may have something to do with the fact the two of them are more vocal about the sounds from the rental unit.

The Tenant stated that they are trying to find alternate accommodation but it is difficult because they have a small child and a dog.

The Tenant, P.S.'s girlfriend and the other occupant of the rental unit, A.B., also testified. She testified that on one occasion at approximately 6:30-7:00 a.m. she was getting ready to go to school. She stated that their son was crying and she went to make a bottle for him at which time the downstairs renter, S.L., came upstairs and told her to keep her son out of the bedroom. She stated that S.L. then called the police, who, when they arrived, expressed to the Tenant that they believed S.L. was being unreasonable.

A.B. testified that she listens to the radio when she cleans. She further confirmed that she vacuums at 8:00 a.m. and did not know that she was not permitted to do so before 9:00 a.m.

The Landlord's agent did not provide any further testimony in reply to the Tenant's response.

Analysis

The Notice alleges 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. As noted previously, the Landlord bears the burden of proving the Notice should be upheld.

The Landlord's agent claimed that the tenancy agreement contains a strict noise clause which prohibits excessive noise from 10:00 p.m. to 9:00 a.m. That agreement was not before me. She further testified that vacuuming is considered excessive noise.

The Tenants testified that at no time were they informed that vacuuming before 9:00 a.m. was considered excessive noise or that it might result in their eviction.

Although the Landlord's agent testified that the Tenants received several warning letters, only the June 9, 2016 letter was before me. The contents of that letter have been reproduced in this my Decision and I find the letter to be vague and with insufficient particulars for the Tenants to know the nature of the complaints made against them.

Introduced in evidence was a letter from the Tenant P.S. dated June 13, 2016 wherein he ask for clarification as to what they were doing that was "too loud". It appears that the Landlord only provide this requested clarification during the hearing when J.F. testified as to vacuuming, stomping and door slamming.

The Tenants submit that the noises complained about by the downstairs renters originate from their active toddler and are merely the sounds of people living in an apartment building. They further submit that as they work early they are awake before others in the rental building. I find their explanation as to the origin of the sound to be reasonable, and I accept that they are not purposefully or unreasonably disturbing the other renters. The Tenants aptly acknowledge that living in a building with several rental units may result in unwanted noise from others. The question before me is whether the sounds complained of are excessive, and whether they create a disturbance sufficient to warrant ending this tenancy.

While I do not agree with the Landlord's assertion that vacuuming constitutes excessive noise, I am confident the Tenants are now aware of the Landlord's expectations with respect to appropriate times to vacuum. I find the balance of the complaints leading to the issuance of the Notice to be normal sounds originating from a family with a young child in a rental building with numerous units.

In all the circumstances, and based on the evidence before me and the testimony of the participants I find that Landlord has failed to prove the reasons set forth in the Notice. The evidence submitted by the Landlord is insufficient to find the Tenants have *significantly* interfered with or *unreasonably* disturbed others as contemplated by section 47 of the *Residential Tenancy Act*.

Therefore, I grant the Tenant's request for an Order cancelling the Notice. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Landlord failed to prove the Notice and the Notice is hereby cancelled.

The Tenants, having been substantially successful are entitled to recovery of the \$100.00 filing fee paid to file their Application for Dispute Resolution. They may reduce their next month's rent by \$100.00 as compensation for this amount.

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: July 27, 2016

Residential Tenancy Branch