



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Tenant AA, the tenant's two agents (collectively the "tenant") and the landlord's agent attended the hearing. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf. Each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

At the outset of the hearing the tenant testified that the emergency repair had already been conducted. Consequently the only remedy the tenant is now seeking is to cancel the 1 Month Notice.

Issue(s) to be Decided

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 1, 2016 on a fixed term until November 1, 2016. Rent in the amount of

\$1,150.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$575.00 at the start of the tenancy. The tenants continue to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated July 13, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- 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 tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

Landlord

The landlord testified that initially the 1 Month Notice was issued for non-compliance with pest control preparation and noise disturbing other occupants. The landlord explained that since the letters regarding pest control have been interpreted into Arabic the pest control issues have been resolved. Overall the landlord contends that the noise created by the tenants have unreasonably disturbed other occupants resulting in complaints.

The landlord has submitted copies of complaints written by one occupant who resides in the rental unit below the tenants. In an email written on June 6, 2016 the occupant below wrote to the landlord that on;

- May 9, 2016 she heard "loud voices and loud talking in the living room until 12:30 am."
- May 10, 2016 she heard "loud voices (arguing?) over the master bedroom from 10:30pm-12:30 am. Teenage (?) female crying from 11:30pm – 12:30am."
- May 11, 2016 she heard "lots of foot traffic and many voices but no real issues"

- May 27-June 6, 2016 she heard “nightly occurrence of people talking through the unit, loud walking through the unit and even what sounds like someone jumping off the top of a bunk bed over our master bedroom, well after 10pm”

In response to this complaint, the landlord issued a letter dated June 7, 2016, to the tenants advising them of the noise complaints. The letter reminded the tenants to be considerate of their neighbours. The letter also indicated that it was the final warning and that further complaints would result in a notice to end tenancy. The landlord testified that this notice was translated into Arabic and served to the tenants. The landlord explained that previous to this letter, on an undisclosed date, a phone call was made with the help of an interpreter, to the tenants warning them to reduce the noise.

On July 12, 2016 the landlord received another email from the downstairs occupant. In the email the downstairs occupant complained that, “there is constant noise coming from upstairs regardless of the hour – it makes no difference whether it is 11 pm, 3:30 am, 6 am or daylight hours. There is no consideration for the volume of voices, foot stomping (jumping off the bed?) or even what sounds like furniture being dragged. It’s common to have people come to the patio to talk to the occupants over top our unit.”

On July 13, 2016, the landlord issued a second letter to the tenants advising them of the latest noise complaint and issued the 1 Month Notice.

The landlord testified that she lives on the opposite side of the rental unit and at times hears noise coming from the tenants unit.

In relation to the illegal activity, the landlord testified that this portion of the 1 Month Notice was completed in error; the tenants have not engaged in illegal behaviour.

Tenants

The tenants are relatively new to Canada and do not speak nor read English. The initial warnings they received they did not comprehend. The tenant acknowledged receipt and comprehension of the June 7, 2016 and July 13, 2016 interpreted letters.

The tenant explained that the reported noise is due to the severe medical condition of his teenage daughter. As per the two submitted Doctors notes, the tenants’ daughter has a diagnosed disease that includes a hearing impairment, limited mobility and cognitive issues.

Because of the hearing impairment, the daughter and remaining family raise their voices to ensure communication. The tenant does not dispute that his daughter yells in pain throughout all hours of the day and night. The tenant explained that his daughter regularly experiences respiratory distress. The tenant testified that his daughter was recently approved for a new breathing machine. It is the tenant's hope that this new machine will assist his daughter and in turn reduce noise. The tenants' daughter sleeps in the master bedroom, close to her parents in the event their assistance is needed. She utilizes a walker which likely contributes to the noise the downstairs tenant hears. The tenant does not recall yelling over the balcony to other occupants.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if 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. The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of emails and testimony regarding noise created by the tenants.

Although there is no dispute that another occupant heard noise and that the tenants created noise, I find the landlord did not sufficiently prove that the noise has reached the level where termination of this tenancy is necessary. The documentary evidence shows only one other occupant complained of the noise, the occupant directly below the rental unit. I find it likely that this complex, like many, is not very sound-proof and that walking or raised conversations probably can be heard in adjacent rental units. The landlord provided insufficient evidence to show other occupants across or beside the rental unit experienced noise disturbance. I find it probable that the downstairs occupant heard the noise as described however I find this does not constitute significant interference or unreasonable disturbance. For these reasons, I find it necessary to cancel the 1 Month Notice. The tenancy continues until it is ended in accordance with the *Act*.

This decision will now serve as an opportunity for the tenants to engage in some corrective actions to reduce noise. Examples of corrective actions may include but are not limited to purchasing and laying a rug, installing curtains, and closing windows.

I caution the tenants that, should the tenants fail to take corrective action to reduce noise and the landlord receives ongoing complaints of noise, this could function as a valid reason justifying the landlord to issue another notice to terminate tenancy for cause under section 47 of the *Act*.

In cancelling this 1 Month Notice, I encourage the parties to communicate with the assistance of an interpreter with respect to tenancy-related concerns.

Conclusion

The tenants' application to cancel the 1 Month Notice is upheld. The tenancy will continue until it is ended in accordance with the *Act*.

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 14, 2016

Residential Tenancy Branch