



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

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
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant JN did not attend this hearing which lasted approximately 30 minutes. The other tenant TD, (the "tenant") and the landlord attended the hearing. At the outset of the hearing, 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.

Issue(s) to be Decided

Are the tenants entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Are the tenants' authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began on March 1, 2014 on a month-to-month basis. Rent in the amount of \$1,590.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$775.00 at the start of the tenancy. The tenants continue to reside in the upper level of the two level rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated July 9, 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 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

The landlord testified that throughout the tenancy he has received a number of noise complaints from the tenant living in the rental unit below. The landlord provided a log indicating dates, times and description of noise as reported by the downstairs tenant. According to the log, the first report of loud noise occurred in July of 2014 with the last on July 5, 2016. As per the log, the noise typically occurred late in the night and ranged from loud thumping base music to loud laughs, conversation and banging on the walls.

The tenant testified that he felt wrongly accused of being unreasonably noisy. In his documentary submission the tenant indicated that he and another roommate worked nights while a third roommate worked early mornings. The tenant explained that due to these conflicting work schedules a body is always up moving about in the rental unit. In the documentary submission the tenant wrote, "These accusations are excessively over the top and we do not believe that we are causing this much of a disturbance."

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 of the residential property.

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 testimony and a written log describing the ongoing noise created by the tenants.

The tenant did not dispute being responsible for the noise, rather his written submission shows he disputes the degree to which the noise affected the downstairs tenant. The logs include an email written by the tenant to the landlord in response to a June 2016 noise complaint. In this email the tenant apologized for playing music late at night, he wrote that he did not realize it was audible from downstairs. The logs indicate other forms of apology from the upstairs tenants to the downstairs tenant. On one occasion the tenants left the downstairs tenant a bouquet of

flowers with a note apologizing for noise. I find these actions of apology show two things, first that the noise occurred and second that the tenants were aware of the effect the noise had on the tenant. In a span of two years the tenants incurred eight complaints of noise. For these reasons, I find the tenants are responsible for unreasonably disturbing another occupant and therefore dismiss the tenants' application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if tenants make an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenants' application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenants' application has been dismissed I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective two (2) days after service on the tenants.

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 1, 2016

Residential Tenancy Branch