



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause (the “Notice”), for monetary compensation for loss or money owed and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on August 22, 2016, be cancelled?
Are the tenants entitled to a monetary order for loss or money owed?

Background and Evidence

The tenancy began on September 1, 2013. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00 and a pet damage deposit of \$300.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on October 1, 2016.

The reason stated in the Notice was that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and

The landlord testified that they received complaints for the occupant that resides in the unit below the tenants. The landlord stated that the noise was a lot of yelling between the male tenant and their eldest daughter.

The landlord testified that they asked both of the tenants and the occupant if they were willing to sit down and discuss the issues and only the occupant responded.

The landlord testified on March 11, 2016, they received a written complaint from the occupant. The letter reads in part,

“many nights during the week after 10 to 11 pm. They come home late and make loud noises. Like banging and stomping...”

[Reproduced as written.]

The landlord testified on July 5, 2016, they received a further complaint that the tenants were stomping and banging between the hours of 12am to 2am. Filed in evidence is a “To Whom It May Concern letter”, which is undated.

The tenant FK testified that their family consists of their wife, and two daughters. FK stated that on occasion they would have a disagreement with their eldest daughter; however, their daughter has not lived in the rental unit since the end of April 2016.

FK testified that in March 2016, they had family come to stay with them as they were attending their eldest daughter’s last basketball games in school. FK stated this was a significant event for their family, as their daughter is a very skilled athlete and was selected to play in the Olympics.

FK testified that on July 5, 2016, their family was up early at 2am as they had to be at the airport for a flight at 6 am. FK stated that unfortunately the occupant’s bedroom is directly below their living room. FK stated that the building is of wood construction and

noise travels. FK stated that their rental unit has wood floors and they have put area rugs down to help stop the noise from travelling.

FK testified that they never received any request to meet with the landlord and occupant to discuss the issues. FK stated that they never heard of the July 2016 complaint until this hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case the landlord has provided three complaints. The first complaint was an argument between the father and eldest daughter; however, the daughter moved out in April 2016.

The second complaint on March 11, 2016, was loud stomping and banging. The evidence of the tenant was that they had guest stay over to attend a special function as this was a special occasion for their family; I find it not unreasonable they would have family attend. While I accept there may have been more noise than usual of people walking on the floor, I find it was not significant or unreasonable under the circumstances and not ongoing.

The third complaint in July 2016 was loud stomping and banging. I accept the tenants' evidence that on July 5, 2016, their family was up at 2am as they were going to the airport, which may have disturbed the occupant in the lower unit; however, as the tenant's bedroom is directly below their living room the noise was likely unavoidable as this is a wood construction residence. I also find this was an isolated incident and not ongoing, such a loud music.

While the occupant in the lower unit is entitled to the rights of quiet enjoyment; however, normal household noise from other units in a wood construction unit are not unusual and not a breach of the Act. There was no evidence of unreasonable on going noise, such as loud music.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I grant the tenants' application to cancel the Notice issued on August 22, 2016. The tenancy will continue until legally end in accordance with the Act.

Since the tenants were successful with their application, I find the tenants are entitled to recover the filing fee from the landlords. Therefore, I authorize the tenants a onetime rent reduction from a future rent payable to the landlord in the amount of **\$100.00** in full satisfaction of this award.

The tenants seek to recover the cost of registered mail and one day off work to submit evidence. However, there is no authority for me to grant costs for preparing for the hearing or serving documents in accordance with the Act. Therefore, I dismiss this portion of the tenants' claim.

Conclusion

The tenants' application to cancel the Notice, issued on August 22, 2016, is granted. The tenants' are authorized a onetime rent reduction in the above amount to recover the filing fee from the landlord. The balance of the tenants' application is dismissed.

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: October 23, 2016

Residential Tenancy Branch