



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee paid for this application from the landlord.

The female tenant and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch on October 20, 2016. The landlord testified that his documentary evidence was put on the tenants' door on October 01, 2016. The tenant disputed receiving the landlord's documentary evidence. The landlord confirmed receipt of the tenants' hearing package and documentary evidence.

Procedural issues – In considering Rule 3.15, the respondent, the landlord in this case, must submit their evidence so that it is received by the Residential Tenancy Branch and the other party not less than 7 days prior to the hearing, and in this case, the landlord did not. In considering whether to accept the landlord's evidence, I find that the landlord delayed in sending their evidence and have provided no proof that they served the tenants the evidence. Consequently, I have excluded the landlord's documentary evidence.

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.

Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

The parties agreed that this fixed term tenancy started on January 15, 2016 under a tenancy agreement with the tenants' former landlord. The tenancy is not due to end until January 15, 2017 with the option of reverting to a month to month tenancy. The parties agreed that rent for this unit is \$1,400.00 per month and is due on the 1st of each month in advance. The tenants paid a security deposit of \$700.00 prior to the start of the tenancy.

The landlord testified that the tenants were served a One Month Notice to End Tenancy for Cause (the Notice) on August 28, 2016 by posting it to the tenant's door. This Notice has an effective date of September 30, 2016 and provides the following reason to end the tenancy:

- 1) *The tenant or a person permitted on the property by the tenant has:*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

The landlord testified that the tenants have disturbed other tenants living below them and have disturbed the landlord. The landlord testified that he had spoken to the previous landlords who mentioned that they had received numerous complaints from the lower tenants about these tenants and in April, 2016 had served the tenants with a notice to comply with the noise policy. The landlord testified that since he has been the

landlord he has also received numerous complaints about noise from these tenants and a notice to comply with the noise policy was served upon these tenants on August 11, 2016 by putting the notice on the tenants' door.

The landlord testified that the female tenant is hostile towards the landlord and has screamed at him over the phone and used profanities. Even after the notice to comply was served on August 11, 2016 the tenants have continued to cause disturbances to other tenants and one of the lower tenants left because of the noise from these tenants. This lower tenant informed the landlord that he has had to call the police because of noise that went on into the night

The landlord testified that while he has been making renovations in one of the lower units he has also heard noise from these tenants' unit above when the tenants have been yelling and screaming at each other. Due to this the landlord testified that he served the One Month Notice upon the tenants.

The tenant testified that they did get a letter from the previous landlords to comply but this letter was sent to all tenants as they all had issues concerning a lower tenant's cat, issues to do with who was supposed to cut the grass, issues with another tenant wanting to let a friend live in a bus on the driveway and noise issues. In the former landlords letter in April, 2016 this addressed all these issues with all the tenants. The tenant disputed that this landlord has ever served the tenants with any other notice to comply and the only notice put on the door of the unit was the One Month Notice.

The tenant testified that the landlord's testimony concerning a lower tenant calling the police is untrue the police have not been to speak to tenants. The landlord's testimony that the lower tenant moved out because of noise is also untrue; the landlord evicted the lower tenants for non-payment of rent in September, 2016. The tenant testified that there has only been one complaint made against them from a lower tenant who has a brain tumor and suffers from migraines. This makes her hypo sensitive to noise and affects her moods. On August 27, 2016 the other tenant broke a bowl in the kitchen and

as this tenant was at the other end of the unit she shouted to him to clean the mess up. The lower tenant did then come out of her unit and shouted at the tenant to shut up. The next morning the tenants saw the landlord outside the unit and they found the Notice to End Tenancy on their door.

The tenant testified that they did not have screaming yelling rows in their unit and have never had a party with the exception of a barbeque one night that only went on until 10.30 as there was children present. The tenant testified that they are aware when the landlord is working downstairs and have not made any loud noise.

The tenant testified that there was one occasion when she did yell at the landlord over the phone. The tenants had been away for the weekend and when they returned home one of the lower tenants informed them that the landlord had been in the lower tenants' unit with another man to check the plumbing. After the landlord left their unit they heard footsteps in the tenants' unit upstairs. That tenant's uncle went upstairs to check and saw the landlord and the other man in the tenants' unit. They came out again to record this on their phone but the landlord had left in a hurry and left the tenants' door open and unlocked. The lower tenants checked to ensure the tenants were not in their unit by ringing the doorbell and then they closed the door and recorded this.

The tenant testified that when she saw the recording she did call the landlord and he denied the claims and called the lower tenants liars. He refused to acknowledge the tenants' concerns about him entering their unit and leaving the door open and mocked the tenant so the tenant agreed she did shout at him to leave their family alone. The tenants seek to have the Notice cancelled and to recover their filing fee of \$100.00.

The tenant asked the landlord about his testimony saying he has emails and written complaints about the tenants and asked why the landlord has not provided this evidence to the tenants. The landlord responded that the tenant is manipulating this and is friends with the lower tenants. The landlord agreed he did evict the lower tenants for

nonpayment of rent and so they are making up this story that the landlord entered the tenants' unit in retaliation against the landlord.

The tenant asked the landlord how this is retaliation when the landlord entered the tenants' unit in July and did not serve the lower tenants with a Notice to End Tenancy until September. The landlord responded that those tenants were served with a Notice in July also. The tenant asked the landlord why he has not provided dates of times of these alleged complaints against the tenants. The landlord responded that he put this evidence on the tenants' door.

The landlord seeks an order to end the tenancy as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenants, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord's testimony was contradicted by the tenant attending the hearing. The tenant disputed that the former landlords did serve a Notice to comply with the noise policy just upon these tenants and not upon all the tenants to ensure they were all aware of the policies regarding noise, cutting the grass and other issues. The landlord has insufficient evidence to show he served a second Notice to comply with the noise policy upon the tenants on August 11, 2016.

I am not satisfied that the landlord has received numerous noise complaints from other tenants as the landlord has insufficient evidence of any noise complaints. Furthermore, the landlord provided contradictory testimony when he testified that a lower tenant

vacated his rental unit due to noise from these tenants and then testified that the lower tenants were evicted due to non-payment of rent. Consequently, I find the landlord's testimony to be less than credible.

With regard to the landlord's testimony that the tenant yelled at the landlord over the phone; the tenant has sufficient evidence to show it was likely the landlord did enter the tenants' unit without proper notice or reason to enter while the tenants were away for the weekend. I find if the tenant became upset with the landlord because of this and the tenant shouted at the landlord then this would be an understandable reaction to the landlord's unauthorized entry. While I do not condone the shouting or yelling of one party to another I do understand that this occurs in certain circumstances and certainly would not be sufficient reason to end a tenancy.

Therefore, it is my decision that in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

As the tenants' application has merit the tenants are entitled to recover the filing fee of **\$100.00** from the landlord and may deduct that amount from their next rent payment when it is due.

Conclusion

The tenant's application is allowed. The One Month Notice to End Tenancy for Cause dated August 27, 2016 is cancelled and the tenancy will continue.

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 24, 2016

Residential Tenancy Branch

