



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' Application made May 12, 2017: CNC; FF
Amended May 16, 2017, to include an additional CNC

Landlord's Application made May 30, 2017: OPC x 2

Introduction

These matters were scheduled to be heard as cross Applications. The Tenants seek to cancel a Notice to End Tenancy for Cause issued May 8, 2017; to cancel a Notice to End Tenancy for Cause issued May 13, 2017; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an Order of Possession based on the Notices to End Tenancy.

The parties and the Landlord's witness gave affirmed testimony at the Hearing.

The Tenants testified that they served the Landlord with their Notice of Hearing documents, including their amended Application and documentary evidence, by registered mail. The Tenants provided the tracking numbers for the registered documents.

The Landlord testified that she served the Tenants with her Notice of Hearing documents by placing the documents in the Tenants' mail box. The Tenants acknowledge service of the Landlord's documents.

Issue(s) to be Decided

Should the Notices to End Tenancy be upheld or cancelled?

Background and Evidence

The Landlord issued two One Month Notices to End Tenancy, the specifics of which are as follows:

“Notice #1”: Issued, and received by, the Tenants on May 8, 2017

Reason(s) for issuing Notice:

- Rental unit/site must be vacated to comply with a government order.

“Notice #2”: Issued, and received by, the Tenants on May 13, 2017

Reason(s) for issuing Notice:

- Rental unit/site must be vacated to comply with a government order.
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord gave the following testimony:

The Landlord issued Notice #1 because she received correspondence from the City ordering that she return the rental property to a single family dwelling. The Landlord provided copies of two letters from the City in evidence, dated February 23, 2017, and March 7, 2017.

The Landlord testified that the occupant of the lower suite moved out on May 31, 2017. The Landlord stated that, even though the Landlord was not required to do so under the Act, the Landlord “paid her out” and immediately refunded her security deposit. The Landlord stated that because the rental property is now a single family residence, she wishes to rent out the whole house, or to move into the house herself.

The Landlord testified that the Tenants have a dog which barks late at night and disturbed the occupant in the lower suite. The Landlord stated that the lower occupant called the City to complain about the dog barking. She stated that the Tenants also fought loudly and that the occupant in the lower suite had to call the police because of the noise.

The Landlord's witness gave the following testimony:

The Landlord's witness is the most recent former occupant of the lower suite, who lived in the rental property from April, 2016 until May 31, 2017. She stated that “on several occasions, the Tenants argued” and disturbed her quiet enjoyment of the lower suite. In

addition, the witness testified that the Tenants' dog barked and whined throughout the night. She stated that this occurred between the hours of 12 midnight and 3:00 a.m., and for several nights over "weeks" of time. The witness testified that she called the City on March 12, 2017, at 4:00 p.m. to complain about the dog barking.

The witness testified that on May 7, 2017, at 11:05 p.m., she called the police because the Tenants were arguing loudly, which disturbed her sleep.

The Tenant JO gave the following testimony:

The Tenant JO stated that the rental property was not adequately sound-proofed. He stated in June 2016, he made "rules" to minimize noise and to make their "living arrangement easier". JO stated that, for example, JO's 6 ½ year old twins were not allowed out of their room until after 10:00 a.m. in the morning, in order to minimize noise. JO testified that his dog has not been alone since he and the prior occupant made those arrangements. JO stated that his dog is 13 years old, sleeps a lot, and that he only has the dog when his children come for a visit.

JO testified that when the police came on May 17, 2017, they assessed the situation and determined that no action was required. He stated that by the time the police arrived, the Tenants were quietly watching television together. JO did not deny that the Tenants had been arguing but stated that the Tenants have "the usual disagreements once every few months", but that they are not too loud and they do not last long.

JO also stated that he also often heard talking and music from the downstairs suite and that he had clearly heard a recent conversation between a contractor and the Landlord discussing plans for the lower suite, and in particular, the costs of raising the ceiling in the lower suite. He stated that the contractor and the Landlord were speaking in a normal tone and volume of voice.

JO did not dispute that once in "May or June of last year", his dog was barking but that it was earlier than 9:00 p.m. in the evening. The Tenant testified that he called his ex-partner, who came to the rental unit and picked up the dog. Other than that single event, JO stated that he does not recall any other incident, and certainly not in March, 2017.

The Tenant provided copies of a letter from a friend who visits the Tenants on "short business trips three to four times a year for periods lasting a few days to a week"; a letter from the Tenant JT's mother; and a letter from "the mother and shared parent of [their twins]" and the co-owner of "their senior dog".

Analysis

The onus is on the Landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the Notices to End Tenancy.

The Tenants reside in the upper suite. Both of the letters from the City relate to the lower suite. The letter dated February 23, 2017, provides (in part) that the Landlord must either:

1. Make application for the required permits as outlined in the attached pages and commence upgrading work for a secondary suite; or
2. (a) Cease occupancy **in the unauthorized basement suite**, remove the kitchen and its cooking facilities...; AND
(b) Complete the mandatory work mentioned on page 3 of the attached pages,

within 30 days of the date of this letter.

[Reproduced as written, my emphasis added.]

The letter from the City dated March 7, 2017, provides (in part):

..... please be advised that an extension of time has been granted until June 30, 2017 in order to allow you the necessary time to:

1. Restore the above building to a one-family dwelling and remove **the basement** range and range hood, including all associated wiring up to the supply breaker, and
2. Correct the mandatory electrical, plumbing and gas items outlined on page three (3) of our letter dated February 23, 2017.

[Reproduced as written, my emphasis added.]

I find that the Order of the City relates to the basement suite only, and not to the upper suite where the Tenants reside. Therefore, I find that the Landlord has not provided sufficient evidence that the tenancy should end for the reason that "Rental unit/site must be vacated to comply with a government order". **Notice #1 is cancelled.**

Likewise, with respect to Notice #2, I find that the Landlord has not provided sufficient evidence that the tenancy should end for the reason that "Rental unit/site must be vacated to comply with a government order". I will therefore consider the other reason provided on Notice #2.

I find that the Landlord's witness's testimony was vague with respect to the number of times, duration of noise, and the dates for which she was unreasonably disturbed by the Tenants.

I accept the Tenant JO's undisputed testimony that the soundproofing between the two suites was insufficient to stop the normal day-to-day noises of living from being heard by either of the occupants. I find that normal day-to-day noises are not reason to end a tenancy. The letter provided by the Tenant JL's mother MH indicates that she was visiting the Tenants for 10 days at the end of April, 2017. MH writes that during her visit she heard loud music and other noises coming from the lower suite. The letter from the Tenants' friend SL also provides that the Tenants "cautioned me about the poor quality of the sound insulation between the units. They also reminded the children to be quiet and not run around the house while they played during the day."

The letter provided by JO's ex-partner RR states that JO received a letter in June, 2016, complaining about the dog barking during the work week. She submits that she has the dog from Sunday through Thursday and that when JO has the dog, he also has the twins and therefore the dog is never at home alone at night. RR wrote that the incident that occurred in June, 2016, happened on a Monday night when JO had the dog due to extenuating circumstances. She submitted that she received a call from JO stating that his neighbour had complained about the dog barking, so she "packed up my kids in their pajamas and drove over to get the dog at approximately 9:00 p.m." She submitted that this was the first and last time the dog was left alone due to the concern of disturbing the neighbours.

For the reasons provided above, I find that the Landlord did not provide sufficient evidence that the tenancy should end because the Tenants, or a person permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord. **Notice #2 is cancelled.**

The Tenants have been successful in their application to cancel the Notices and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Landlord. Pursuant to the provisions of Section 72(2)(a) of the Act, I ORDER that the **Tenants may deduct \$100.00 from future rent due to the Landlord.**

Conclusion

The Landlord's Application is dismissed.

The Tenants' Application is granted. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Tenants may deduct the cost of their filing fee, in the amount of **\$100.00**, from future rent due to the Landlord.

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: June 23, 2017

Residential Tenancy Branch