



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenants for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness gave evidence under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on September 1, 2012. Rent of \$935.14 is payable on the first day of each month. On August 11, 2017 the Landlord served the Tenants with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The reason indicated on the Notice is that 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 details on the Notice indicate that between March and August 2017 the Landlord received numerous complaints of yelling, swearing, screaming, banging and barking coming from the unit.

The Landlord provides evidence of numerous and almost daily complaints made by one tenant, an employee of the Landlord, living directly below the Tenants between March 1 and April 30, 2017. The complaints were primarily of a child and a female screaming for several minutes at a time and of the child crying for hours at a time. A second tenant living on the level below the Tenants made one complaint in March 2017 of the child screaming for hours at a time with the mother screaming and swearing at the child. This tenant reported its concerns to child services. A third tenant living above the Tenants complained of similar noise three times over the same period and also reported concerns to child services. The police were called on at least one occasion. The Landlord wrote two warning letters in March 2017 and discussed the complaints with the Tenants. After April 30, 2017 and until July 2017 no further complaints were received. After April 19, 2017 no further complaints were received from the tenant in the upper unit. This tenant indicates in writing in September 2017 that all has been quiet for the last six months with the exception of the dog howling on occasion and that this does not bother the tenant.

In July and August 2017 the two tenants living in the lower level again started to make complaints about the child crying and the dog being left alone and howling. Only one complaint was made in relation to the mother yelling. One of the complaints made was in relation to a metal pot that had been hung on the deck for the child to bang and this pot was removed immediately after the Tenant were made aware of the disturbance. Both of the lower tenants indicated that they were ending their tenancy. The tenant who gave notice to end for July 2017 was also an employee of the Landlord. This tenant did not move out in July 2017. The tenant who moved out at the end of August 2017 cited three reasons for moving, the noise from the upper level, a break-in and persons walking past the back of the unit by an unfenced area. The tenant employee who is also the Witness for these proceedings moved out at the end of October 2017.

The Witness states that the yelling and crying occurred during the day and overnight. The Witness states that the swearing was done by the mother and was directed at the

father for not being involved in helping out at home. The Witness states for example the mother would yell at the father "I f-----g do everything". The Witness states that the mother primarily used the "f" word. The Witness states that she reported the disturbances to both the police and child services. The Witness states that the police did not follow up and that child services informed the Witness that an investigation resulted in a determination that there was no reason for any intervention with the family. The Witness states that in July and August 2017 the child would scream during the night sometimes for an hour and the dog would howl about once a day during the day. The Witness states that she started a new job at the beginning of September 2017 and no longer works for the Landlord. The Witness states that she moved out of the unit below the Tenants as she was exhausted from a lack of sleep.

The Landlord states that since the end of August 2017 there have been no further complaints but that there is no confidence that there will be a reduction in noise. The Landlord states that there is only a small layer of concrete between the floors separating the units, that the building is a wood frame construction and that the Tenants have carpet in the living room. The Landlord states that there has been no assessment of the unit in relation to added sound proofing.

The Tenant states that he and his partner were having marital difficulties for a short period of time in March 2017 and that there have been no arguing noises from their unit since then. The Tenant states that the dog howling is normal and acceptable behavior from a dog with separation anxiety and that they have been seeing a trainer to help their dog deal with their absences from the unit. The Tenant states that he called the local authorities who indicated that they were not in breach of any bylaws with the dog.

The Tenant states that their child has had difficulties sleeping since birth and that it used to take a couple of hours at night for the child to fall sleep. The Tenant states that the child also cries if it does not get its way. The Tenant states that they are in the process of training their child to go to bed at night and to set boundaries. The Tenant

states that they used to be very strict with the child who would “throw tantrums” and that they were using the “crying out method” for putting the child to sleep. The Tenant states that their child would cry relentlessly and that they were torn between letting him cry things out or giving in to his tantrums. The Tenant states that since July 2017 they have been using a medically approved method for helping their child fall asleep and that it appears to be working. The Tenant states that they have also been relenting when their child throws a tantrum in order not to disturb the neighbours. The Tenant states that this is not a good option and has become as a vicious cycle as the tantrums are reinforced due to their fear of eviction.

The Tenant provides supportive witness letters from their neighbours to either side and across the hallway. The Tenant states that none of these neighbours have had any problems with noise. The Tenant states that the Landlord and the tenant who used to work for the Landlord are biased against his partner, the mother. The Tenant states that his own approach with neighbours is to talk with them and resolve problems and that the Witness had initially told him that the noise from their unit was not bad. The Tenant states that the Witness then later refused to speak to him about the situation with their child and told the Tenant that his partner, the mother was verbally abusive to the child and maybe physically abusive as well. The Tenant states that the Landlord suggested to the Tenant that the Tenant was not aware of what was happening at home while the Tenant was out and offered the Tenant another unit if the Tenant left his partner.

The Tenant states that they chose this building as it was advertised as a family friendly building with their ads showing toddlers. The Tenant states that they are under significant stress from the eviction notice and that apart from a couple of weeks of marital arguments there is only normal noises one can expect from a child. The Tenant states that everyone who investigated their family dynamics has encourage them to move out of the unit in order to lower their stress levels but that available housing is very limited, particularly for families with children and pets. The Tenant states that their

son has started daycare and that they expect things to improve significantly with their son.

The Landlord does not dispute that a conversation was held with the Tenant about a transfer to another unit of only the husband and child.

Analysis

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. The intensity of complaints in the spring of 2017 and then their disappearance over June and July 2017 correspond with the Tenant's explanation of the short lived marital problems. Within this context and given the short period of time I would not consider the swearing by the one partner about the other partner's lack of contribution to the partnership to be an unreasonable disturbance. It appears from the evidence of reporting to child protection authorities by the upper tenant and the lower tenant that they were disturbed primarily by the fear that the noise from the parent combined with the child's crying indicated that a child was being abused. This fear would reasonably generate repeated complaints. I note however that once the upper tenant was provided with explanation and assurances by the authorities, no further complaints about the child's crying came forward from this tenant.

Given the undisputed evidence of the Landlord's offer to facilitate the breakup of the couple's relationship I consider that the continuing complaints made in August 2017 from the tenant employee were now more related to a bias against the mother than any noise itself. Although the other lower tenant cited the noise from the upper unit as a reason for ending the tenancy I consider that the other reasons, a break and enter and strangers having access to the property would have been the more compelling reasons to leave a unit. I note that this tenant was not brought to the hearing to provide clarification evidence.

I accept that training a child to go to bed and setting boundaries can be a challenging time. These are normal parenting challenges and children's noise, including crying, can be expected in any home. There is no evidence that the Landlord did anything to improve the sound barriers between the Tenant's unit and the tenant employee's unit. Finally I note that matters have improved with the child and that there have been no complaints since August 2017, well over two months now. For these reasons I find that the disturbances were short lived and not unreasonable or significant in a building that provides housing to families. Given the family orientation of the building I would reasonably expect a landlord to pay greater attention to sound barriers than would otherwise be necessary in a building, for instance, populated with seniors. I find therefore that the Notice is not valid and that the Tenants are entitled to its cancellation. The tenancy continues.

Conclusion

The Notice is cancelled and the tenancy continues.

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: November 10, 2017

Residential Tenancy Branch