



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and the tenant was accompanied by 2 others for support, who did not testify or take part in the proceedings. The tenant and the landlord's agent each gave affirmed testimony and were given the opportunity to question each other and give closing submissions.

The landlord's agent advised that evidentiary material was provided to the Residential Tenancy Branch and to the tenant, but was provided by the landlord named in this Application, and the landlord's agent is not certain how or when it was submitted. The tenant advised that he received the landlord's evidentiary material under the door of the rental unit as recently as this past Monday (December 11, 2017), which was 3 days prior to the hearing, but I have not received any of it. The landlord's agent disagreed stating that the landlord who submitted it has been on vacation for 2 weeks, so it must have been provided to the tenant prior to that. The tenant opposed inclusion of the landlord's evidence if it was submitted after the cut-off date.

I have now received that evidence, being 9 pages, which is stamped as being received by the Residential Tenancy Branch on December 6, 2017, which is 8 days prior to the hearing.. I find that it has been submitted on time under the Rules of Procedure, but I do not accept that it was provided to the tenant within the time required. The evidence had to be tracked down by me, and I found that it was uploaded incorrectly to the system. However, the tenant stated it was slid under the door of the rental unit on December 11, 2017 and the landlord's agent believed the tenant had been served prior to the landlord's vacation 2 weeks ago. The Rules of Procedure require that a respondent serve an applicant with all evidence at least 7 days before the hearing. I am not satisfied that the landlord has complied. The tenant has opposed inclusion of the evidence, and I decline to consider it.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on August 1, 2017, although the tenant actually moved in on July 15, 2017. The landlord's agent testified that the fixed term expires on July 31, 2018 at which time the tenant must move out of the rental unit. Rent in the amount of \$1,600.00 per month is payable on the 1st day of each month and there are no rental arrears. On June 22, 2017 the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite on the 15th floor of a high-rise apartment building.

The landlord's agent further testified that on September 25, 2017 the tenant was served with a One Month Notice to End Tenancy for Cause by placing it through the mail slot. A copy of the notice has been provided as evidence for this hearing. It is dated September 25, 2017 and contains an effective date of vacancy of October 31, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by 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 or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Not long after the tenancy began, the tenants in the adjoining suite called the landlord complaining of people horsing around jumping, banging against walls at different times of night and early morning. One side of the tenant's unit is an elevator, and the other side is the adjoining suite. One of the landlord's employees called the tenant to let him know about complaints and to stop. The tenant responded by letter to neighbours apologizing for the disruption. Complaints continued and the landlord's employee asked neighbours to put it in writing, which they did on August 29, 2017 complaining that bouncing and wall banging has continued at 7 a.m. with multiple people in the apartment bouncing around and banging. On August 30 the landlord's agent gave a letter to the tenant saying it would

no longer be tolerated and that tenants must be quiet especially between 10 p.m. and 9 a.m. On September 16, 2017 neighbours sent another letter to the landlord stating that on September 11 and 15 there were constant visitors and banging on walls, and if the landlord's agents would inspect they would find full-on body-slam. The tenant denies to the landlord's agents that he is making noise. On September 18 the landlord's agent sent another letter to the tenant saying it was the second breach letter about noise asking for cooperation.

The landlord's agent also testified that there is no allegation of illegal activity.

Clause 13 of the tenancy agreement says that tenants must not disturb other tenants. Complaints have continued since the issuance of the One Month Notice to End Tenancy for Cause. The landlord's agent read into evidence a letter she testified is dated October 26, 2017 from the neighbouring tenant detailing dates of events that occurred since, and stating that if not corrected, the neighbour will have to find another place to live. Another is dated November 13, 2017 stating that an incident occurred on November 11, 2017 at 3:45 p.m. about banging on the walls which sounded like wrestling from the tenant's rental unit. At times it was so disturbing police were called. The noise stopped when police knocked on the door, but the tenant would not answer the door or the buzzer.

The tenant testified that when he learned of the first noise complaint he wasn't given any specific information, just that it was a noise complaint. He wrote to the neighboring tenant near the beginning of the tenancy in an attempt to open up conversation because the tenant didn't think there was a lot of noise. The tenant has never had more than 2 people visit, and because smoking is not allowed in the building, the tenant rides the elevator to go outside to smoke.

The tenant received the first breach letter on August 30, 2017 from an agent of the landlord that the tenant didn't know. The tenant was handed the second letter through the elevator door while he was leaving. Both noise complaints received said the same thing, but the tenant has never been provided with any details of what the noises were. After 9:00 p.m. the tenant watches movies with blue tooth and a head set, and has moved furniture away from the wall that joins the neighbour's unit, in case those were the noises complained of, but the tenant doesn't know. The tenant tried to call the landlord a number of times and sent a number of emails to another agent saying that he can't reach the landlord, but no one has called the tenant. As far as the tenant knows, no other neighbours have complained.

The tenant denies that there has been any "body slamming," and there is no damage to walls or the apartment. The landlord is invited to inspect the rental unit. The tenant is

very diligent about being quiet because he's now paranoid and feels he's been bullied. Despite attempts to find out what the specific complaints were, the tenant was not given the chance to correct it until receiving the landlord's evidence package.

The tenant has absolutely no recollection of police being at the rental unit, and testified that he has not had any contact with the police at the apartment. Considering the police didn't stick around, the tenant was likely sleeping.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons are:

- Tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by 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 or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The landlord's agent testified that no illegal activity is alleged, and therefore, that reason is not a reason to end the tenancy.

The landlord's agent testified that the tenancy agreement contains a material term that the tenant must avoid disturbing other tenants. The landlord has provided the tenant with written notices, but disturbance complaints continue to be made by the neighbouring tenant. I have no reason to disbelieve that testimony, however the tenant testified that he has, on many occasions tried to reach the landlord to find out what exactly the complaints are, without success and has taken steps to mitigate what might be the problem.

In order to end a tenancy for breach of a material term of the tenancy agreement, the landlord must give written notice to the tenant and a reasonable time to correct the breach. The landlord in this case has given 2 letters to the tenant, but has not provided information that would be detrimental to correcting a breach. The tenant now has that information in the evidentiary material of the landlord, and I order the tenant to avoid causing such noises that might disturb the neighbouring tenant, but I am not satisfied that the landlord has established that the tenant was given sufficient information in either notice to correct the breach, and I cancel the One Month Notice to End Tenancy for Cause.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated September 25, 2017 is hereby cancelled and the tenancy continues.

I hereby order the tenant to comply with the material term of the tenancy agreement, by not disturbing other tenants and observing a quiet time between 10:00 p.m. and 9:00 a.m. daily.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: December 21, 2017

Residential Tenancy Branch