



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for the recovery of the filing fee paid for this application.

The Landlord and the five Tenants were present for the duration of the teleconference hearing. All parties were affirmed to be truthful in their testimony. The Tenants confirmed receipt of copies of the Landlord’s evidence and testified that they served the Landlord’s agent with the Notice of Dispute Resolution Proceeding package (the “Notice of Hearing”) before being told they should serve the two Landlords as well.

The Landlord confirmed receipt of the Notice of Hearing and copies of the Tenants’ evidence 12 days prior to the hearing. Despite receiving the evidence and Notice of hearing late, the evidence shows that the Landlord was aware of the hearing prior to receiving the Notice of Hearing. I also find it reasonable that the Tenants would serve the Notice of Hearing to the agent for the Landlord, as it was the agent who had served them with the One Month Notice. As the Landlord confirmed that she had time to review the Tenants’ evidence, and due to the urgency of the matter at hand, a decision was made to continue with the hearing and to allow all evidence to be considered.

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 to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

Are the applicants entitled to the return of the filing fee paid for this application?

Background and Evidence

The tenancy agreement was submitted in evidence and both parties agreed as to the following details of the tenancy. The tenancy began on September 1, 2017 and a security deposit of \$1,200.00 was paid at the outset of the tenancy. The tenancy agreement was for a fixed term of one year. The five Tenants rent the upper part of a home with a suite in the lower level that is rented separately.

The Tenants testified that monthly rent is \$2,300.00 as rent was reduced by \$100.00 to cover the utility costs for the downstairs tenants. The Landlord testified that rent is \$2,400.00, but a reduction of \$100.00 was given only for the time when there were tenants living downstairs. As the tenants are no longer living downstairs, the Landlord stated that rent is now \$2,400.00. As this was not the matter at hand, further discussion regarding the monthly rent was not engaged in during the hearing. Both parties confirmed that \$2,300.00 was paid for June 2018 rent.

The Landlord testified that the downstairs tenants were upset by the noise caused from the Tenants upstairs. When disturbed by the noise, the downstairs tenants would email the Tenants upstairs to ask them to quiet down. The Landlord testified that many of the complaints were late at night and referenced the emails submitted into evidence that show the email exchange occurring after midnight.

The emails from the downstairs tenants to the Tenants upstairs note loud music, yelling and stomping and these are the concerns that the downstairs tenants passed along to the Landlord in January 2018. The Landlord testified that this was the first she had heard of the noise complaints. After receiving notification of the concerns from the downstairs tenants, the Landlord stated that she called and spoke to one of the upstairs Tenants and then emailed a warning letter to all five of the Tenants on January 13, 2018.

The email dated January 13, 2018 was submitted into evidence. The email outlined the noise concerns as loud music, yelling, fighting and stomping. The letter also stated, "Finally, understand that if the problems in this breach letter are not resolved (the agent for the Landlord) will issue you guys the One Month Notice to End Tenancy."

The Landlord submitted that on April 28, 2018, she received another letter from the downstairs tenants complaining of noises from upstairs that included yelling, loud music, and the sound of chairs being moved across the floor. On April 29, 2018, the downstairs tenants provided their notice to the Landlord that they would be moving out at the end of June 2018 due to the concerns with the noise from upstairs that had not been resolved.

The Landlord testified that her agent served the Tenants with a One Month Notice in person on May 1, 2018. The One Month Notice, which was submitted in evidence, notes the reason for ending the tenancy as the following:

- 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 testified that the material term that the Tenants were in breach of was the other tenants' right to quiet enjoyment of the home.

The Tenants confirmed receipt of the One Month Notice on May 1, 2018.

The Tenants provided testimony that the noise in the home was not excessive and instead was regular noise from living in the rental unit. They referenced some of the emails from the downstairs tenants where it was noted that the downstairs tenants could hear footsteps and cabinet doors through the ceiling as evidence of the poor insulation and thin floors.

The Tenants testified that they have not had any parties in the home and instead, that the noise complaints were related to listening to music in the rental unit, having conversations, or watching sports and movies on the television. They denied the claims of fighting, stomping and yelling. The Tenants noted that bylaw enforcement or police were never involved and that often the complaints from the downstairs tenants came well before 11:00 pm.

The Tenants also testified that they could hear voices, music and other daily noises from the downstairs tenants, which they stated also demonstrated the ease at which noise travelled between the two rental units in the home.

The Tenants submitted in evidence an email from one of their neighbours to the Landlord dated April 30, 2018. The neighbour stated in the email that they have had no concerns with the five Tenants and that there have not been any parties in the home. The neighbour also noted that the homes in the neighbourhood have poor

soundproofing between the floors, which may be connected to the noise issues that had been brought up.

The Landlord testified that the noise from the upstairs Tenants is an extreme situation as evidenced by the downstairs tenants moving out due to the noise. She issued the One Month Notice as the noise and disturbance caused by the Tenants is impacting others' right to quiet enjoyment.

The Tenants testified that the noise in the home is not extreme and is day to day noise that should not have led to the issuance of a notice to end the tenancy. They also submitted that they should not be responsible for the downstairs tenants' decision to move out of the home.

Analysis

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

The One Month Notice issued May 1, 2018 notes the cause as a breach of a material term of the tenancy agreement. I refer to the *Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms* which provides a definition for a material term as "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement."

Policy Guideline 8 and Section 47(h) of the *Act* further clarify that to end a tenancy due to a breach of a material term, the party claiming the breach must inform the other party in writing of the issue, note that they believe this is a breach of a material term of the tenancy agreement, provide a reasonable deadline to correct the issue and note that if correction by the deadline is not met, the tenancy will be ended.

The Landlord provided testimony that the material term that the Tenants had breached is a right to quiet enjoyment as stated under Section 28 of the *Act*. However, the One Month Notice listed the breach of a material term in relation to Section 47(1)(h) of the *Act*.

While the right to quiet enjoyment is a right outlined in the *Residential Tenancy Act*, I find that the noise disturbances must be serious and significant to be considered a breach of a material term that leads to the issuance of a One Month Notice. Therefore, I

look to the evidence and testimony of both parties to determine if the disturbance of quiet enjoyment for the downstairs tenants was significant enough to end the tenancy.

The Landlord and Tenants were in disagreement as to the cause of the noise within the home. The Landlord stated that the noise was excessive stomping, yelling and playing loud music that often occurred late at night. The Tenants stated that the noise complaints came from day to day activities such as listening to music or having a conversation and was not connected to partying or anything else that would have been within their control.

I accept the Landlord's evidence that the downstairs tenants were disturbed by the noise from upstairs and that this led to their decision to move out. I also accept the Tenants' evidence that noise in the home travels easily and that they were also able to hear noise from the downstairs tenants.

I note that in accordance with the Rules of Procedure, when a tenant applies to dispute a notice to end tenancy, the burden of proof is on the landlord to prove that the reasons for the notice are valid. I find there is insufficient evidence to prove that the noise concerns from the Tenants were significant enough to warrant the claim that a material term of the tenancy was breached. Based on the conflicting testimony of both parties regarding the noise, and on a balance of probabilities, I find the Landlord has failed to establish that the noise from the upstairs Tenants excessive and at a level to warrant ending the tenancy early and instead, the noise concerns resulted from sound travelling easily between the two rental units within the home.

I also find that the proper process for ending a tenancy for the breach of a material term was not followed as the Landlord did not provide a reasonable deadline for correcting the breach. Instead, the Landlord advised the Tenants by email on January 13, 2018 that if the issue was not corrected, the tenancy would be ended. I find that this warning letter did not provide a reasonable deadline for the Tenants to correct the concerns. When the Landlord received a further complaint from the downstairs tenants on April 28, 2018, the One Month Notice was issued.

In accordance with the above analysis, I find that the reasons listed on the One Month Notice dated May 1, 2018 are not valid and therefore the notice is cancelled and of no force and effect. The tenancy continues until ended in accordance with the *Act*.

As the Tenants were successful in their application, I award the recovery of the filing fee paid for this application in the amount of \$100.00.

Conclusion

The Tenants are awarded the recovery of the filing fee paid for this application and are entitled to a **one-time deduction of \$100.00** from their next monthly rent payment.

The One Month Notice dated May 1, 2018 is **cancelled and of no force or effect**. The tenancy continues until ended in accordance with the *Act*.

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: July 5, 2018

Residential Tenancy Branch