



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord's agent, the landlord's building manager and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's building manager (the landlord) indicated that they would be the primary speaker for the landlord during the hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties and witness testimony, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent to the landlord by way of registered mail. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

The tenant acknowledged receipt of the landlord's evidentiary package. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's evidentiary package.

I find that the landlord's evidence package was not provided to the RTB; however, the landlord stated that there was only one written witness statement and a text message in the documentary evidence which they were intending to rely on and the tenant did not dispute that they had this evidence or the content. For this reason, I find that I can

consider this evidence as the tenant did not dispute the content of what has been provided to them by the landlord.

The tenant testified that they did not provide any evidence to the landlord although they did provide evidence to the Residential Tenancy Branch (RTB). Rule 3.14 of the RTB Rules of Procedure (the *Rules*) establishes that all documentary evidence to be relied on at the hearing must be received by the RTB and the respondent not less than 14 days before the hearing.

I find that the tenant did not serve the landlord with their evidence package in accordance with Rule 3.14 and that the landlord may be prejudiced by this as they did not have a chance to review and respond to the tenant's evidence package; however, as the tenant's evidence consisted of four written notices given to the tenant from the landlord, including the notice to end tenancy, I will consider these items as the landlord is not prejudiced by accepting evidence that was provided to the tenant from the landlord.

The other items that the tenant submitted are a complaint letter that was provided to the landlord in the past and a written statement from the tenant. As the landlord indicated that they did not have these items before them and did not have a chance to respond to these evidence items, I will not consider them.

The tenant confirmed that they received the One Month Notice on July 26, 2018, the same date it was posted to the door of the rental unit. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the One Month Notice on July 26, 2018.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord and the tenant agreed that this tenancy began on June 01, 2015, with a current monthly rent of \$835.00, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$380.00.

A copy of the signed landlord's One Month Notice dated July 26, 2018, was entered into evidence by the tenant. In the One Month Notice, requiring the tenant to end this tenancy by August 31, 2018, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed 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.

In the Details of Cause the landlord has indicated that:

The tenant and guests (1 female, 2 boys, 1 baby) have not complied with requests and notices about the noise level coming from the unit. Notices were given on July 20, 23, 25 and verbal warnings.

The tenant also provided in evidence:

- a copy of a written notice dated July 20, 2018, in which the landlord indicates that the noise level from the rental unit is unacceptable. Two incidents are noted, one on July 19, 2018, with some children who ran in the hallway for a short period at 11:30 p.m. and then continued to jump, run and talk. The other noted incident occurred on July 18, 2018, when there was a baby crying for a long time really late at night;
- a copy of a written notice dated July 23, 2018, in which the landlord states that there was another complaint about loud noises from the apartment at 10 p.m. on Sunday July 22, 2018. The notice goes on to state that a material term of the tenancy agreement is that tenants shall maintain quiet between 11 pm and 9 am;
- a copy of a written notice dated July 25, 2018, stating that the tenant and their visitors continue to make noise through the day and late at night which is unacceptable and that this notice is the tenant's last warning.

The landlord submitted that they have had problems with noise from the rental unit including loud music and the television. The landlord testified that at 11:30 p.m. on July 19, 2018, there were three boys who came out of the apartment running and laughing

down the hallway. The landlord stated that they had a text message from another occupant inquiring about when quiet time is for the building

The landlord stated that she knocked on the door of the rental unit at 10:08 p.m. on July 22, 2018, due to a verbal complaint about loud noises coming from the rental unit. The landlord submitted that there was written complaint from an occupant in the unit below the tenant's unit due to loud television noises coming from the rental unit around 10:00 p.m. on July 24, 2018, which resulted in the third written notice being served to the tenant regarding noise levels on June 25, 2018.

The landlord confirmed that there has only been one written witness statement regarding television noise levels from the rental unit. The landlord stated that she does not live in the building that the rental unit is located in but frequently walks around the building to make sure that everything is ok. The landlord submitted that she has been supervising work being done on a different unit in the building which is when she became personally aware some of the instances of noise concerns coming from the rental unit.

The tenant testified that her sister and her sister's children came to visit on July 18, 2018, and that the baby only cried for a short period before 11:00 p.m. on that same date. The tenant submitted that the kids only ran out to get something from the car on July 19, 2018, and then they went back into the rental unit and went to sleep.

The tenant stated that when the landlord came to knock on the door, everyone was asleep other than her sister who was in the bathroom at the time. The tenant stated that the landlord told her that she was recording outside the door of the rental unit but would not share the audio with the tenant when the tenant asked. The tenant maintained that there was no recorded noise that the landlord was able to capture because they were being quiet at that time.

The tenant testified that she has had past concerns about the landlord trying to evict her which is why she and her sister took the kids to the park every day to avoid noise concerns from other occupants and the landlord. The tenant stated that the landlord has been texting other occupants about whether the tenant is making noise and disturbing them while asking for witness statements to use against the tenant. The tenant stated that she feels targeted by the landlord due to the amount of rent being paid.

The landlord denied targeting the tenant due to low rent as she stated that there are other tenants who pay lower rent who are not being given eviction notices.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on July 30, 2018, and since I have found that the One Month Notice was served to the tenant on July 26, 2018, I find that the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find that the landlord bears the burden to prove 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 and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Residential Tenancy Policy Guideline # 8 states that to end a tenancy for breach of a material term the landlord must inform the other party in writing that:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

Having reviewed the affirmed testimony and documentary evidence, I find that the landlord has not demonstrated that the tenant has breached a material term of the tenancy agreement which was not corrected after written notice to do so. I find that the material term of the tenancy that the landlord is referring to is regarding unreasonable noise from the rental unit after 11:00 p.m. I further find that there is only one confirmed instance of noise after 11:00 p.m., which was when the children ran into the hallway laughing at 11:30 p.m. on July 19, 2018.

I find that all other instances noted by the landlord, including when the landlord knocked at the tenant's door at 10:08 p.m. on July 22, 2018, and the complaint letter from the occupant below for loud noise around 10:00 p.m., happened before 11:00 p.m. and were not breaches of a material term of the tenancy agreement. I find that there is no evidence provided from the landlord that the problem of noise after 11:00 p.m. was not fixed after the first incident on July 19, 2018.

I further find that the July 25, 2018, written notice indicates that this notice is the final warning, but there is no evidence or testimony as to what breach or unreasonable disturbance occurred which resulted in the One Month Notice being served to the tenant the following day on July 26, 2018. For the above reasons, I find that the landlord has not proven that the tenant breached a material term of the tenancy agreement which was not corrected after written notice to do so.

I have reviewed all documentary evidence including the affirmed testimony and, on a balance of probabilities, I find the landlord has not provided sufficient evidence 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. As the landlord did not provide any written witness statements of any tenants being unreasonably disturbed by the baby crying on July 18, 2018, I accept the tenant's testimony that it occurred before 11:00 p.m. for a short period and I find that a baby crying for a short period of time before 11:00 p.m. is not unreasonably disturbing or significantly interfering with the landlord or other occupants.

As there were no written complaints from occupants of the building about the children running in the hallway, I find that the landlord has not demonstrated that any other occupants were unreasonably disturbed or significantly interfered with. Even if the landlord had submitted witness statements about that incident on July 19, 2018, I find that the landlord did not indicate the amount of time that the children were loud and jumping around after they came back into the rental unit which would give weight to the landlord's assertion that other occupants were unreasonably disturbed, but again, there were no witness statements for this incident.

In the absence of any written witness statements to indicate otherwise, I accept the tenant's testimony that the children were quiet within a reasonable period after being in the hallway and that that other occupants were not unreasonably disturbed.

I find that all other instances that the landlord has provided testimony about have occurred before 11:00 p.m. and that they were not unreasonable disturbances as there is no evidence of noise levels being unacceptable within the timeframe that the tenant is allowed to make noise. Although there is one witness statement from the tenant below, I find that one actual written complaint regarding the television being loud around 10:00 p.m. is not sufficient evidence that the occupant was unreasonably disturbed as it occurred when reasonable noise is permitted and no other occupants submitted witness statements regarding the volume of the television that evening to confirm it was unreasonable.

Therefore, based on a balance of probabilities and the above, I find the landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the tenant and the One Month Notice dated July 26, 2018, is set aside. This tenancy will continue until it is ended in accordance with the *Act*.

In regards to the Application to have the landlord comply with the *Act*, section 28 of the *Act* protects the tenant's quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. I find that the tenant has demonstrated that their own quiet enjoyment of the rental unit has been impacted by the landlord serving four written notices, including the One Month Notice, within a six day period, with only one actual confirmed breach of a material term of the tenancy agreement in the four notices. I find that the landlord did not dispute that they were standing outside of the tenant's unit trying to record unreasonable noise and that this action impacts the tenant's right to reasonable privacy.

For the above reasons, pursuant to section 62 of the *Act*, I **order** the landlord to refrain from issuing written notices to the tenant unless there are actual breaches of a material term of the tenancy agreement that can be confirmed with documentary evidence; or, if other occupants of the building, not including the landlord standing outside the tenant's rental unit, are unreasonably disturbed with noise levels coming from the rental unit during the quiet time as per the rules noted in the landlord's July 23, 2018, notice. I note to the tenant that they should be mindful of volumes of the television in the rental unit in consideration of the occupants living around them.

Conclusion

The tenant is successful in their Application.

The One Month Notice dated July 26, 2018, is cancelled and of no force or effect.

This tenancy will continue until it is 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: September 25, 2018

Residential Tenancy Branch