



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on July 17, 2018 (the "Notice") and to recover the filing fee.

The hearing was scheduled for teleconference at 9:30 a.m. on September 14, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The reasons cited on the Notice were 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 Landlords' agent testified as follows. He confirmed that he does not live in the building which he described as an 18 unit apartment building built in 1985.

He further confirmed that the Tenant has been at the rental building since March 1, 2012. He stated that to his knowledge the Tenant gets along with most people in the building.

R.R. stated that the Notice was issued as a result of complaints from another tenant, T.C., who lives in the rental unit below the Tenant and has been there since December 2014. R.R. stated that she complains about the noise made by the Tenant. R.R. stated that T.C. provided a recording to R.R., but he was not able to hear the noise which she claimed was coming from the Tenant's apartment. He also stated that she indicated she would call into the hearing as it was her intention to play the audio recording over the phone. T.C. did not call into the hearing.

R.R. stated that T.C. complains of laughing, walking, and other noises from the subject rental unit. R.R. also stated that he offered to meet with the Tenant and T.C. and she refused. R.R. confirmed that the Tenant was willing to meet with T.C. and R.R. in order to resolve matters.

R.R. stated that he spoke to the other renters in the rental unit and they all vouched for him, not against him. He noted that the tenant above the rental unit, F.B., also confirmed she does not hear unreasonable noise from the Tenant.

In response to the Landlord's submissions the Tenant testified as follows. He confirmed that he is seldom home and when he is he is very conscious of people around him. He also stated that he rarely has people over as he is mindful of keeping noise down.

He further confirmed that he has two cats and has gone so far as to put carpet on the floor to minimize the sounds they make when jumping off the bed.

The Tenant further stated that he keeps his TV volume so low that when he is in the kitchen he can't hear the TV.

The Tenant also noted that when he heard T.C. was bothered by his noise, he spoke with other occupants of the rental building and they confirmed they had not heard the noise complained of by T.C.

The Tenant submitted a letter from a friend, S.A., who writes that she has been to the rental unit numerous times. S.A. also writes that they have observed the Tenant being conscientious of noise including not having gatherings at the rental unit.

The Tenant provided a further statement from a friend, D.B., who writes that they have also been to the rental unit numerous times. D.B. confirms that they seldom spend time at the unit, never have more than three people (including the Tenant) over, and leave early so as to minimize any noise.

The Tenant stated that he gets along well with everyone in the building. He confirmed there are 18 units in the rental building. The Tenant stated that it is an older building and there is some sound transference such that he hears the upstairs neighbour walking around and "normal living sounds".

Analysis

Ending a tenancy is a significant request. In this case the Landlord issued the Notice pursuant to section 47(1)(d)(i) which reads as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

The use of the words *significantly* interfered with and *unreasonably* disturbed are purposeful and denote an interference and disturbance which is both significant and

unreasonable. I am unable, based on the evidence before me to find that the Tenant has engaged in such conduct.

Living in a multi-unit dwelling involves hearing others. Walls are shared and sound transfers. While residents may desire a living situation whereby they do not hear others, this is seldom possible in multi-unit dwellings, particularly in older buildings.

After consideration of the testimony and evidence before me I am not satisfied this Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I accept his affirmed testimony that he has done as much as he can reasonably be expected to do to reduce the noise from his rental unit. I found the Tenant to be forthright and consistent in his testimony. He was conscientious of noise from guests, his television and his pets and I accept his testimony that he takes steps to minimize any sound from his rental unit. I also accept his testimony that sound does travel through the building and while he does hear his neighbours, he accepts this as part of living in a multi-unit dwelling.

I am also persuaded by the Landlord's agent's testimony that he spoke to other occupants of the rental building and they vouched for him, not against him. While the Tenant T.C. appears to have issues with sound from his rental unit, she did not call into the hearing to provide affirmed testimony in this regard.

I therefore find the Landlord has failed to prove the reasons for issuing the Notice. The Tenant's Application is granted.

Conclusion

The Notice is cancelled. The tenancy shall continue until ended in accordance with the Act.

The Tenant is entitled to recover the filing fee. He may reduce his next month's rent by \$100.00 to recover this amount.

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 17, 2018

Residential Tenancy Branch