



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ROYAL VILLAGE DEVELOPMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on November 27, 2018, to suspend or set conditions on the landlord’s right to enter the rental unit, to have the landlord comply with the Act, for compensation for monetary loss or other money owed and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord) has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on August 1, 2017. Rent in the amount of \$2,865.00 was payable on the first of each month. The tenant paid a security deposit of \$1,362.50 and a pet damage deposit of \$1,362.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2018.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health safety and lawful rights of the other occupant or the landlord; and
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlords agents testified that there has being ongoing unreasonable noise, by the tenant that is significantly interfering the occupants that live below the tenant.

The landlord's agents testified that they had to relocate the previous occupants due to the same noise. The agents stated that the new occupants moved into the unit below the tenants on July 14, 2018, and the new occupants are now having the same issues of ongoing unreasonable noise.

The landlord's agents testified that they have had multiple conversations with the tenant and have issued warning letters; however, the noise continues to cause unreasonable disturbances.

The landlord's agents testified that the ongoing noise if from stomping, the tenant's child running, and banging. The agents testified that they are a multi-family complex and have at least 20 other families with up to four children in a unit, and they do not have the same problems as they have no issue with reasonable noise of children playing.

The landlord's agents testified that they have done everything that they can to give the occupants in the unit below the tenant's the right to quiet enjoyment, which have including moving the previous occupants to another unit.

The landlord's agents testified that they gave the first written warning to the tenant on September 5, 2018. The allegation was running, stomping and banging that lasted through the entire evening, which the tenant indicated at that time that this was discrimination and harassment.

The landlord's agents testified that the noise continued and the tenant was served with a second breach notice on October 27, 2018, which the tenant stated at that time that this does not mean anything as you cannot evict for noise. The agents stated the tenant also stated that they have to pay them two months of rent and that their child is going to do what they want.

The landlord's agent testified that the tenant said to go to the office and make up the third breach, because they will get free money. The agents stated that they were told that the only way the tenant would move was if the landlord paid them the equivalent of two months' rent.

The landlord's agent testified that the tenant is purposely causing noise, which has escalated since they have provided the tenant with verbal warning and multiple written warning letters. The agents stated that and they have offered the tenant a rental unit on a ground floor and also a townhome, both of which the tenant declined both of the offers. The agents stated that the only option left to them is to end the tenancy, which is the last resort.

KD witness for the landlords testified that they live directly below the tenant and that they have no quiet enjoyment of the premises as there is constant noise of stomping, running, and banging. KD testified that this is not normal household noise of a child simply playing.

KD testified that the noise has only increased since the tenant was served warning letters. KD stated that the tenant made a threat to them that they had the previous occupants move and you can move too, if you don't like the noise. KD also stated that the tenant said that they pay more rent and they can do as they want.

SD witness for the landlords testified that they live directly below the tenant and when they get home from work they get no quiet enjoyment as the tenant's child is running constantly, and the stomping goes on for hours. SD stated that the tenant is also purposely stomping. SD stated that when the tenant gets home that they stomp three (3) times on the floor to give them the signal that they are home.

SD testified that the police have also been involved due to the escalation of the matter as they banged on the wall trying to get the noise to stop and the tenant called the police.

The tenant testified that the issue of their child running in the hallways was resolved. The tenant stated that they did allow their child to run up and down the hallway to burn off energy; however, once they were notified of the problem they no longer allow the child to run in the hallways. However, they do allow the child to run ahead of them in the hallway to get the elevator.

The tenant testified that they do not feel that they have to police their child, as their child does need to burn of energy as their child is two (2) years old.

The tenant testified that they did tell the occupant that they could move, only because it was the landlords' responsibility to tell the occupants that a child lived above their unit and they could expect noise of a child.

The tenant testified that the noise the occupants are hearing is normal household noise of a child playing. The tenant denied that they are purposely stomp on the floor when they get home. The tenant stated that they have placed carpets on the floor to help with the noise.

The tenant testified that they did indicated to the lower occupant that they could move if they did not like the noise, as they should have been informed by the landlord that a child lives above them. The tenant denied that they told the occupant that they pay more rent and can do what they want.

The tenant testified that they called the police because the lower occupants were banging on the ceiling, frightening the tenant's child.

The tenant testified that their child is two years old and is allow freedom and they cannot constantly police them. The tenant submits that there have been previous decisions made where the noise of a child, is not grounds to end the tenancy.

The tenant testified that the occupants are also speculating on who is making the noise, as they cannot know who is banging.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health safety and lawful rights of the other occupant or the landlord; and
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In this case, one of the reasons stated in the Notice was the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find the tenant was provided sufficient written warnings by the landlords to correct this behaviour and sufficient time to correct the behaviour.

I accept the evidence of the witness KD that the ongoing noise is from running, stomping and banging. I further accept that the tenant told them that they could move if they don't like the noise. This is supported by the evidence of the tenant and the comment the tenant made to the landlord that they could do what they like.

Additionally, the tenant during the hearing made several comments that they do not need to police their child. I do not find that response to be reasonable or appropriate given numerous warning letters.

Furthermore, the daily noise of the child playing is not the issue, as you can expect a child to play; however, the noise that is heard is ongoing running, jumping and stomping.

The evidence of the landlords' witnesses is that is the tenant purposely stomping and that the noise has escalated since the tenant has been issued warning letters. I find this is more likely than not as the matter has escalated to the point where the police are being called, even though it was the tenant that called the police.

I accept the tenant's evidence that the occupants can only speculate as to who is making the noise. While I agree with that statement of the tenant, I find it is clear by the landlords' witness that they are hearing ongoing unreasonable disturbances, from whoever is making the noise.

The landlords in this matter have other families living in the building, which have not been evicted for children playing. The landlords have relocated a previous occupant due to the ongoing noise from the tenant's rental unit and have even offered the tenant living accommodation more suitable for the tenant's family, which was not accepted by the tenant.

I find the landlords have made every reasonable attempt to resolve the issue to provide both parties a suitable living arrangement, which is not what normally, would be expected in such a situation. I accept the only option left to the landlord is to end the tenancy.

I find the Notice issued on November 27, 2018, has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlords have accepted occupancy rent for the month of January 2019, I find it appropriate to extend the effective vacancy date in the Notice **to January 31, 2018**, pursuant to section 66 of the Act. Therefore, I find the landlords are entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **January 31, 2019, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Further, I find the tenant's claim for compensation has no merit. The parties were at a previous hearing and the landlord was found not to have breached the Act. Further, the tenant is not entitled to compensation for when receiving a notice of eviction, even if not proven, which is not the case before me. Therefore, I dismiss the tenant's application in it's entirely without leave to reapply.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlords.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlords are granted an order of possession.

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: January 21, 2019

Residential Tenancy Branch