



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CA REALTY LTD.DBA CREIGHTON&ASSOCIATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, FFT

Introduction

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

The Tenant and an agent for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of a video submitted into evidence by the Tenant. The Landlord did not receive a copy of a written statement by the Tenant which will therefore not be accepted as evidence. The Landlord also did not receive a copy of an airplane ticket submitted into evidence by the Tenant.

The Tenant stated that he submitted evidence of airplane tickets which confirm the dates he was out of the town and when he returned. However, the copy of the airplane ticket was sent in a format that was not able to be opened so the Tenant was asked to resubmit this evidence in another format and consideration would be given as to whether to accept this as evidence. Although the Tenant resubmitted the evidence following the hearing, it will not be accepted as evidence in this decision.

As stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, the applicant must serve their evidence to the respondent at least 14 days prior to the hearing. Therefore, I do not accept the airplane tickets as documentary evidence and only accept the evidence that was served in accordance with the *Rules of Procedure*. This includes the video evidence submitted by the Tenant and the documentary

evidence of the Landlord. The Tenant confirmed receipt of a copy of the Landlord's evidence package.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

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

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be granted an extension of time to dispute the One Month Notice to End Tenancy for Cause?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on June 1, 2008. Current monthly rent is \$1,185.00 and a security deposit of \$480.00 was paid at the outset of the tenancy.

The Landlord testified that a One Month Notice was served to the Tenant by registered mail on December 20, 2018. The One Month Notice, dated December 20, 2018 was submitted into evidence and states the following as the reasons for ending the tenancy:

- 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

Further details were provided on the One Month Notice as follows:

The tenant has played loud music after midnight on several occasions and we have received complaints from other tenants. We have sent him four (4) letters regarding this breach of tenancy, on May 12, 2017, December 12, 2017, July 19, 2018 and December 10, 2018. Despite these notices the loud music and noise has continued.

(Reproduced as written)

The Landlord testified that the Tenant has repeatedly breached the tenancy agreement by playing loud music which is disturbing the other occupants in the residential property. The Landlord stated that this is a breach of paragraph 17 in their tenancy agreement. The tenancy agreement was not submitted into evidence, but the Landlord read from the tenancy agreement. The clause in question was regarding conduct including that the tenant must not disturb or harass other occupants or the landlord and must not cause noise disturbance between 10:00 pm and 9:00 am.

The Landlord stated that the first warning letter was sent to the Tenant on May 12, 2017 and although they received sporadic complaints after that, more recently they have been receiving repeated complaints regarding noise coming from the Tenant's rental unit.

The Landlord submitted the following into evidence:

- A breach letter dated May 12, 2017. States that there was loud music on May 12, 2017 between 1 and 3 am. Notes that the Tenant will be evicted should any further breaches occur
- A breach letter dated December 12, 2017 which states loud music at 2 am. Notes that this is a final warning and the Tenant will be evicted if behaviour continues
- Incident report June 27, 2018 from upstairs resident stating that there was loud music heard from the Tenant's rental unit the previous evening
- A breach letter dated July 19, 2018. States that loud music heard night of June 26, 2018 and that continued behaviour will lead to eviction
- A letter from the upstairs resident dated December 4, 2018. States that this resident has submitted 3 written complaints and 2 verbal complaints and that the issue with noise from the Tenant's unit continues. The letter states that most of the time the music is off by 10:30 or 11:00 pm, but that this resident gets up at 4 am for work

- Incident report dated December 9, 2018 from the upstairs resident stating that the Tenant was playing loud music the previous night and the resident had to get up at 4 am.
- A breach letter dated December 10, 2018. The letter states that there were complaints of loud music the weekend of December 1 and December 2, 2018. The letter states that if the behaviour continues, an eviction notice will be served.

The Tenant testified that he was away for approximately 3 weeks and did not arrive home until after the One Month Notice had been sent. He stated that he was out of the country from December 17, 2018 until approximately January 7, 2019 which is when he received the One Month Notice and filed the Application for Dispute Resolution. The Tenant stated that he travels a lot for work and that the Landlord is aware of this.

The Tenant stated that he has not received any complaints from any of the other residents in the building regarding loud music or noise. He stated that he received some of the warning letters from the Landlord, but not all of them. He noted that he was away for a total of two months between September and December 2018, as well as another three weeks beginning December 17, 2018. The Tenant submitted that while he may listen to music or have the television on, this is done at a normal volume, the same as he has always done since the beginning of his tenancy.

The Tenant stated that no one has knocked on his door to tell him to turn his music down. He stated that the Landlord did not speak to him in person, but after receiving one of the warning letters, he put a note in their mailbox stating that the music was not coming from his rental unit.

The Tenant submitted video evidence of him walking in the hallway outside of his rental unit and pointing out the units where loud music could be heard. The Tenant stated that he only did this recently, but that music can constantly be heard from other units. The Tenant questioned why the Landlord was sure the noise complaints were regarding his rental unit when music could be heard so clearly from other rental units as well.

The Landlord stated that the upstairs unit would be the closest one to be able to hear loud noise from the Tenant's unit. He stated that noise coming from the surrounding units would not be heard by the upstairs resident and also that they had not received complaints about any of the surrounding units. The Landlord stated that they have served multiple warning letters which should have been enough of a warning to the Tenant without needing verbal warnings as well.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. The Landlord testified that the One Month Notice was sent to the Tenant

by registered mail on December 20, 2018. The deeming provisions of Section 90 of the *Act* state that registered mail is deemed received five days after sending.

However, *Residential Tenancy Policy Guideline 12: Service Provisions* states that deeming provisions are used in the absence of information to determine when a document was received. *Policy Guideline 12* further states that the time provided to dispute a notice is calculated from the date when a document is received.

The Tenant applied for an extension of time under Section 66 of the *Act* which allows for extensions to be provided in exceptional circumstances. However, I do not find that this was a matter of exceptional circumstances and instead find that the Tenant applied within 10 days as allowable under Section 47(4) of the *Act*.

The Tenant provided affirmed testimony that he was out of the country for work as of December 17, 2018 and travelled home on or around January 7, 2019. The Landlord did not submit the registered mail tracking information that would have confirmed when the package was delivered. The Landlord also did not dispute that the Tenant was away during the time when the notice was mailed. Therefore, in the absence of evidence to determine otherwise, I accept the Tenant's testimony that he was away and received the One Month Notice on or around January 7, 2019. As this was the same day he applied to dispute the notice, I find that the Tenant applied within the 10 days allowable under the *Act*.

As I found that the Tenant applied within 10 days of receipt of the One Month Notice, the matter before me is whether the One Month Notice is valid. As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the Landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice was served to the Tenant pursuant to Sections 47(1)(d)(i) and 47(1)(h) which state that the Tenant has unreasonably disturbed others and has also breached a material term of the tenancy agreement.

The Landlord stated that the One Month Notice was issued due to loud music from the Tenant which has disturbed other occupants. The Tenant was not in agreement that he plays music loudly such that it would cause a disturbance to others. When the parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with

the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

The Landlord submitted into evidence four breach letters, with the most recent dated December 10, 2018 stating that any further issues with noise would lead to an eviction. The Landlord also included three complaint letters from the upstairs resident stating that there was excessive noise from the Tenant's rental unit, with the most recent complaint from December 9, 2018.

The Tenant stated that he does not play music excessively loudly and also submitted video evidence of music heard clearly in the hallway from other rental units, which is evidence as to how easily the music is heard from the other rental units. I accept that music can be heard easily throughout the rental building and while there were three complaint letters submitted from the same resident, I do not have further evidence to establish that the noise is coming from the Tenant's rental unit and not one of the other surrounding rental units.

I also find that I do not have sufficient evidence to establish that the music heard is unreasonably loud or causing an unreasonable disturbance due to the time that the noise is occurring. The complaint letters note loud music in the evenings and that this resident gets up early for work, and also note that usually the music stops by 10:30 or 11:00 pm. Although three complaints were submitted from one resident, I find it likely that further complaints would have been received from neighbouring units should the Tenant regularly be playing music excessively loud or at inappropriate times of the day.

Of the four breach letters included in evidence, the two most recent letters from 2018 seem to be based on the complaint letters submitted as noted above. There is no evidence to determine that there were further complaints in 2018 that led to the breach letters or the One Month Notice.

As such, while it is evident that the upstairs resident can hear music, I am not satisfied that the music is coming from the Tenant's unit, and that it is unreasonably loud and/or at inappropriate times of the day.

Therefore, I find that the Landlord has not submitted sufficient evidence to meet the burden of proof to establish that the Tenant is *unreasonably* disturbing or *significantly* interfering with others or that the Tenant has breached a material term of the tenancy agreement regarding excessive noise. The Tenant was successful in his application to

cancel the One Month Notice. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful with his application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Tenant may deduct \$100.00 from his next monthly rent payment.

Conclusion

The One Month Notice dated December 20, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72, the Tenant may deduct \$100.00 one time from the next monthly rent payment as recovery of the filing fee.

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: February 15, 2019

Residential Tenancy Branch