



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FFT, MNDCT, OLC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on March 4, 2019, wherein the Tenants requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on February 22, 2019 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the Regulation, and/or the residential tenancy agreement, an Order for \$22,880.00 in monetary compensation from the Landlord and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on April 26, 2019.

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.

Preliminary Matters—Landlord's Name

A review of the materials confirms that the Tenants incorrectly spelled the Landlord's given name. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenants' Application for Dispute Resolution to accurately name the Landlord.

Preliminary Matters—Delivery of Decision and Order

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Preliminary Matter—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenants' monetary claim; accordingly I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

I also find that the Tenant's claim for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, and the residential tenancy agreement is not sufficiently related to the validity of the Notice; as such, I dismiss this claim with leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began September 1, 2015. Monthly rent is \$900.00.

The Tenants reside in a basement suite in a single family dwelling; there is an upper unit which is also rented. The Tenants and the Tenant, D.V.,'s 12 year old daughter reside downstairs.

The Landlord testified that the reasons for requesting an end to this tenancy were due to complaints from the upstairs tenants about noise from the downstairs. The Landlord stated that the first complaint he received from the downstairs' renters was in May 2017. The upstairs tenants initially complained of the downstairs renters' guests coming to the rental unit for "short transactions" suggesting the Tenants were involved in illegal activity.

The Landlord further testified that more general noise complaints were made by the upstairs tenants beginning January 4, 2018. The Landlord submitted that the upstairs complained of the sound of music and bass as well as the sound of video game playing from late at night until early in the morning. The Landlord submitted copies of electronic communication between himself and the upstairs renters where they report their concerns about sound.

The Landlord confirmed that he is unaware if there is any sound barrier between the units, although he has experience installing such a barrier in previous homes.

In terms of whether he has personally witnessed the sound issues, the Landlord stated that the upstairs renters phoned him in the evening at approximately 6:00 p.m. in the middle of February 2019 about the sound. The Landlord stated that he went to the rental unit and the Landlord could clearly hear the video game sound. Apparently, the upstairs renters stated that the sound he heard at that time was the same as what they experience at night.

The Landlord confirmed that the upstairs tenants moved out of the rental unit March 5, 2019 and new renters moved in on March 15, 2019. The Landlord further confirmed that he has not had any complaints from the new upstairs tenants as to the sound.

The Landlord stated that he believes the Tenants have also breached a material term of the tenancy agreement, and in particular, paragraph 3 of the addendum to the tenancy agreement which reads as follows:

3. There are to be no loud music or parties past 11pm on weekdays unless prior arrangements have been made.

The Landlord testified that he issued the Notice on February 22, 2019 and personally served the Tenants on February 22, 2019. The reasons cited on the Notice are as follows:

- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and,
- Breach of a material term that was not corrected within a reasonable time after written notice to do so;

The Landlord stated that he was personally served with the Tenant's Application for Dispute Resolution on March 14, 2019.

In response to the Landlord's submissions, the Tenant, D.V., testified as follows.

D.V. testified that he was personally served the Notice on February 22, 2019. The Tenant testified that he initially filed for dispute resolution on March 4, 2019. He then filed an

amendment on March 7, 2019. He stated that, due to issues with his email account, he did not see the email from the Residential Tenancy Branch confirming the date of the hearing until the 12th. He stated that upon seeing the email, he served the Landlord with his Application, Notice of Hearing and evidence.

D.V. stated that they have not made unreasonable noise in the entire time they have been there. D.V. further stated that he has a 12 year old daughter who goes to bed at 9:30 p.m. during the weeks such that they are all mindful of noise. D.V. further stated that the allegation that they are playing video games and loud music all night is also completely false as they are all in bed at 11:00 p.m.

D.V. stated that he believes that the upstairs tenants initially complained about them because they believed the Tenants were dealing drugs. D.V. stated that was the furthest thing from the truth. D.V. stated that in fact drugs and alcohol are the reasons he is separated from his spouse; his former spouse has drug and alcohol issues and as a result his daughter was removed from her care. D.V. stated that he went to court for a year to get custody and he provides a safe environment for his daughter and does not associate with people who do drugs or drink.

D.V. stated that there are sound issues in the rental home as sound transfers between the two units. He stated that they can hear the upstairs tenants using the toilet, coughing, sneezing, walking, doing laundry, and even make out their conversations etc. D.V. stated that you can hear "everything". D.V. stated that when his television is on low, you can hear it upstairs. He also stated that there is a paper thin door between the units that acts as a funnel.

D.V. stated that his roommate has a clock radio that he listens to at night over his oxygen which was, at one time, the source of the upstairs tenants' noise complaints about music.

D.V. testified that they get along with the new upstairs renters. He noted that the weekend prior to the hearing the upstairs renters had people over for an Easter event with children and as a result there was a lot of noise; he noted that they didn't complain to the Landlord as they realize that sound transfers.

D.V. also stated that they have taken steps to move anything that makes noise from their bedrooms to minimize any impact on the upstairs renters.

D.V. testified that it was his understanding that the previous upstairs renters moved out because they bought a house, not because of the noise. D.V. further stated that earlier in the tenancy the previous tenants informed them that they were saving money while renting in hopes of being able to buy a house.

In reply the Landlord confirmed that he has never gone downstairs to listen to the sound transference from the upstairs to the downstairs. The Landlord also conceded that there may

be inadequate sound proofing. The Landlord stated that earlier on in the tenancy the Tenants acknowledged issues with the sound transference and were mindful of not making noise, but lately they haven't been.

The Landlord further stated that he believes that the Tenants have only been quiet because they do not want to be evicted.

The Landlord confirmed that he informed the new renters of the issues with sound transference but also informed them that the Tenants had been issued an eviction notice and that was pending a hearing.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

In the case before me the Landlord alleges that the Tenants have significantly interfered with another occupant and have breached a material term of the tenancy agreement. The Landlord testified that the reasons for issuing the Notice are due to the noise complaints from the previous upstairs renters.

The previous upstairs renters did not call into the hearing to testify, although the Landlord submitted electronic communication which indicates they regularly complained about noise from the downstairs. As they did not call into the hearing to testify, their evidence is "hearsay". Hearsay evidence is admissible in hearings before the Residential Tenancy Branch, however it is afforded less evidentiary weight than affirmed testimony as the person making the "out of court" statement or writing the document is not available at the hearing to have their testimony tested through cross examination. I therefore find the evidence from the previous upstairs renters should be afforded less weight than the first hand testimony of the parties in attendance at the hearing.

The Landlord testified that the only time he personally heard the sound was when he attended the rental unit at the request of the upstairs renters at 6:00 p.m. and he could hear the sound of video games. This is not an unreasonable time to hear sounds from an adjacent rental unit.

The Tenants deny making excessive noise. The Tenant D.V. testified at the hearing and stated that his daughter is school aged child, such that they are all in bed early. D.V. further testified that he believes that the rental unit is insufficiently soundproofed because they also clearly and regularly hear the upstairs tenants using the toilet, coughing, sneezing, walking, doing laundry, and even make out their conversations.

The Landlord confirmed that the previous upstairs renters have moved out and new renters have been living upstairs since March 15, 2019. He also confirmed that in the five weeks from the date they moved in to the date of the hearing on April 26, 2019, the Landlord has not received any noise complaints. He submitted that this was only because the Tenants were worried about being evicted.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the Landlord has failed to prove the reasons for issuing the Notice. I find the Landlord has submitted insufficient evidence to support a finding that the Tenants have *significantly* interfered with or *unreasonably* disturbed another occupant. I also find the Landlord has failed to prove the Tenants breached a material term of the tenancy.

I accept the Tenants evidence that there may be insufficient soundproofing between the units due to the normal sounds they hear from the upstairs. I also accept their testimony that they make their best efforts to be quiet and not disturb the upstairs renters.

I am also persuaded by the Landlord's testimony that he has not received noise complaints from the new upstairs renters. I therefore find it likely that the previous upstairs renters were overly sensitive to sound, or had personal issues with the Tenants such that they may have wanted to see them evicted.

I therefore grant the Tenants' application and cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

Although not strenuously argued by the Landlord at the hearing before me I find the Tenants filed their Application for Dispute Resolution within the 15 days required by the *Residential Tenancy Act*. The undisputed testimony before me was that the Tenants were served the Notice on February 22, 2019. The Tenants applied for Dispute Resolution on March 4, 2019 such that I find they applied within the strict time limit set out in section 47 of the *Act*.

Conclusion

The Tenants' Application to cancel the Notice is granted.

Having been successful, the Tenants are entitled, pursuant to section 72 of the *Act*, to recover the \$100.00 filing fee by reducing their next months' rent accordingly.

The Tenants' Application for monetary compensation and an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations* and/or the residential tenancy agreement are dismissed with leave to reapply.

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: May 6, 2019

Residential Tenancy Branch