



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, 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”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing as were two agents for the Landlord (the “Landlord”). The Tenant also had three friends present for support who did not testify or participate in the hearing. The Landlord had a witness join during the hearing to present testimony and answer questions from both parties.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Both parties submitted video recordings as evidence and confirmed they received copies of the videos from the other party. Neither party brought up any issues regarding service.

All 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.

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

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy started in September 2017. Current monthly rent is \$1,350.00. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were paid at the outset of the tenancy.

The Landlord testified that they served the Tenant with a One Month Notice on May 28, 2019 by posting the notice on the Tenant's door as well as placing a copy in her mail slot. A copy of the One Month Notice 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
 - Put the landlord's property at significant risk
- 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:

After written notice that extremely loud arguing coming from the Tenants suite must stop and not disturb or cause a distraction for others it continued being an issue. Saturday May 25 at approx. 420pm the [City] police needed to be called in once smashing of glass items were heard. [Police file number]. We cannot continue to allow this behaviour at our building.

The Landlord testified as to their concerns regarding the noise levels from the Tenant's rental unit and stated that they have had many conversations with the Tenant about keeping the noise at reasonable levels. The Landlord noted that the noise includes extreme arguing that has been occurring over the last year.

Regarding claims of a breach of a material term, the Landlord referenced their tenancy agreement which notes responsibilities for conduct of the residents and also states that there are quiet hours between 10:00 pm and 9:00 am.

Regarding the reference to risk to property on the One Month Notice, the Landlord stated that during an argument heard on May 25, 2019 the sound of glass breaking was heard. They also stated that in the Tenant's video from the incident on this date there is a hole seen in the wall of the rental unit.

The Landlord had a witness attend the hearing who is the resident who lives above the Tenant's rental unit. The witness provided affirmed testimony that she began hearing significant noise from the Tenant's rental unit around April or May 2018. She stated that her entire apartment shakes and that last August she ended up calling the police. The witness noted that the noise includes slamming doors, parties, and other loud noises. The witness stated that she has recorded some of the incidents, which were submitted in the Landlord's evidence.

The witness stated that the noise is significant in her bedroom such that she has begun sleeping in her daughter's bedroom to limit the times she is woken up from noise. The witness stated that she can hear walking and other noises in the building but noted that the noise heard from the Tenant's unit is extreme and that she just wants the noise to calm down or stop.

The Landlord referenced three videos submitted in their evidence and stated that they were all taken on May 25, 2019 by the upstairs resident who was present at the hearing as a witness. The Landlord also submitted recordings from June 30, 2019, which was after the One Month Notice was served.

The Landlord testified as to a warning letter provided to the Tenant on March 29, 2019. The letter was included as evidence and states that they received a complaint of loud arguing and slamming doors. In the letter the Landlord reminds the Tenant of the 'Conduct' clause of the tenancy agreement and states that if disturbances continue a One Month Notice will be issued.

The Landlord also submitted a copy of a letter dated May 28, 2019 in which they referenced an incident on May 25, 2019 between the hours of 4:00 pm and 5:00 pm when extremely loud arguing was heard. The letter notes that smashing glass sounds were heard, and the police were called to attend.

The Landlord submitted copies of text message communication between themselves and the Tenant, as well as text messages between themselves and the upstairs resident. In the texts the upstairs resident notes concerns with screaming and slamming that shook her entire apartment and notes incidents from August 2018, October 2018, January 2019, and April 2019, as well as the incident from May 25, 2019. The Landlord also submitted an email complaint from the upstairs resident dated November 1, 2018 and an undated letter of complaint from the same upstairs resident.

The Tenant submitted a significant amount of evidence, including photos of the residential property that she referenced as evidence that the building was old and conducive to noise transferring easily. The Tenant testified as to the incident that occurred on May 25, 2019 and stated that this involved an argument with her teenage daughter over chores which lasted approximately 15 minutes. Due to concerns that the neighbour would involve the Landlord and that the police would be called, the Tenant stated that she began recording the argument. She submitted the recording into evidence that was approximately 17 minutes long.

The Tenant also submitted a copy of two police reports. The first report references an incident on August 29, 2018 in which the police were called after yelling and door slamming was heard. The report notes in part the following:

Dispute confirmed to be verbal only and very minor in nature. No further action required. File concluded.

The second report references an incident on May 25, 2019 in which police were called due to loud arguing and yelling. In the report the police note that the Tenant provided the constable with a video recording of the interaction. The report notes the following:

Both parties confirmed that nothing physical had occurred, both parties advised to keep it down when arguing and look to resolve issues in another way. No further police action.

The Tenant also submitted a photo showing the glass that was broken during the argument.

The Tenant submitted videos of other noises heard from her rental unit to demonstrate that sound travels easily. She stated that her and her daughter have conflict just like

other people but that these are not fights, but arguments. The Tenant noted that some of the complaints from the upstairs neighbour must have been regarding other residents of the building as her and her daughter were not home at the time of the incidents.

Analysis

Based on the relevant testimony and evidence of both parties, I find as follows:

As stated in Section 4 of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the Tenant's door on May 28, 2019 and she applied to dispute the notice on June 5, 2019, I find that the Tenant applied within the allowable timeline. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch 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.

Regarding the claims of significant interference or unreasonable disturbance, the Landlord provided testimony and evidence regarding noise from the Tenant's rental unit. However, I accept the testimony of both the Tenant and the Landlord's witness that this is an older building in which regular noise such as walking can be heard from other tenants, leading to noise travelling more easily in the building.

I also note that all of the complaints regarding noise were from one other resident in the building. Should the noise concerns be to the level as described by the Landlord, I find it likely that other neighbouring residents would have complained as well. I also accept the evidence of the Tenant that the noise complaints are coming from arguments that occur between herself and her teenage daughter, such as the incident on May 25, 2019 which while I am sure was likely loud, was an incident that occurred for a short period of time during the day. I also note that in one of the videos submitted by the Landlord it seems that the arguing was being recorded through open windows, which would allow the noise to travel more easily.

While the Landlord and their witness testified as to slamming doors and other incidents that occurred, I fail to find sufficient evidence to establish that this is occurring on a regular basis and is caused by the Tenant. The Tenant noted that she and her daughter were not home at the time of some of the incidents. When parties to a dispute resolution

proceeding provide different but equally plausible accounts as to what occurred, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim.

I also note that I find reference to incidents that occurred after service of the One Month Notice on May 28, 2019 to be irrelevant as they would not have been valid reasons for service of the One Month Notice. Based on the information before me, while I do find there have been some incidents where arguing in the rental unit was likely quite loud, I am not satisfied that this has caused significant or unreasonable disturbance to others. However, I do note that the Tenant has been sufficiently warned that noise travels easily throughout the residential property and should be aware of this and ensure her daughter is aware as well regarding arguments and other issues.

Regarding the claim that the Tenant has put the Landlord's property at significant risk, the Landlord referenced smashing glass noises and a hole in the wall of the rental unit. However, I accept the evidence of the Tenant that shows that a glass was broken during the argument and do not find that this is the Landlord's property. As for the hole in the wall, I do not find sufficient evidence from the Landlord to establish that the Tenant caused significant damage to the property, such as photos of the hole or conversations with the Tenant about who is responsible for repairing the damage. While the Landlord referenced a hole seen in one of the Tenant's videos, this would not have been known until the evidence was received for this dispute resolution proceeding. There was no further evidence submitted regarding a hole in the wall. Therefore, I do not find this to be a valid reason for ending the tenancy.

Regarding the claim that the Tenant has breached a material term of the tenancy agreement due to conduct and noise disturbance outside of daytime hours, I find insufficient evidence to establish this. While the Landlord submitted copies of compliant messages from the upstairs resident, the Tenant disputed some of these stating she was not home at the time. Without further evidence to establish that the noise was coming from the Tenant's rental unit, I am not satisfied that it was. As for the May 25, 2019 incident, the Tenant and Landlord both agreed that this occurred between 4:00 pm and 5:00 pm, which was not during the quiet hours noted in the tenancy agreement.

As stated in *Residential Tenancy Policy Guideline 8*, a material term is one which both parties agree is so important that even a trivial breach may lead to the end of the tenancy. In this matter, I am not satisfied that the Landlord has provided sufficient evidence to establish that noise in the residential property is a material term of the

tenancy regardless of the time that the noise occurs. Therefore, I do not find that this is a valid reason for ending the tenancy.

Accordingly, I find that the Tenant was successful with the application to cancel the One Month Notice. The One Month Notice dated May 28, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful with the 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 this amount one time from the next monthly rent payment as satisfaction of this fee.

Conclusion

The One Month Notice dated May 28, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

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: July 17, 2019

Residential Tenancy Branch