



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, 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 monetary compensation, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the hearing as was the Landlord. The Landlord’s spouse was also present and assisted the Landlord but did not participate directly in the hearing. 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. Neither party brought up any issues regarding service during the hearing.

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.

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?

Is the Tenant entitled to monetary compensation?

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 July 2014. Rent in the amount of \$800.00 is due on the first day of each month. The Tenant paid a security deposit of \$400.00 at the start of the tenancy.

The Landlord testified that he served the Tenant with a One Month Notice in person on July 26, 2019. The Tenant confirmed receipt of the One Month Notice on this date and that he applied to dispute the notice on August 6, 2019.

A copy of the One Month Notice was submitted into evidence and states the following as the reason 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

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

Multiple complaints and fines as listed on pages 1 and 2 of attached sheets.

Along with the One Month Notice were two letters from the strata manager of the residential property. The first letter dated June 26, 2019 references machining noise from the Tenant's rental unit. In the letter the strata manager also writes that there have been "numerous complaints" about construction noises in the afternoons and evenings and makes note of noises "relating to but not limited to drills, hammers, sanders, a trolley or heavy tool on wheels rolled about and running water."

The second letter dated July 16, 2019 also references construction noise and it is noted that this noise takes place at all hours. In the letter the strata manager notes that five complaints have been received regarding excessive noise on July 8, July 14, July 15, and July 16, 2019. The letter references a violation of the strata bylaws including unreasonable noise and that a strata lot must not be used for any purpose other than a private dwelling. The Landlord was fined \$50.00 and testified that the strata fines are now at \$200.00, of which the Tenant has not paid.

The Landlord also submitted copies of letters from the strata dated July 30, 2019 and August 6, 2019, both of which were dated after the One Month Notice was issued.

The Landlord provided testimony that the issues regarding consecutive noise violations came up a few weeks before the Tenant was served with the One Month Notice. The Landlord stated that he has tried to be reasonable, but the Tenant has been in violation of the strata bylaws and the Landlord is receiving fines as a result. Despite the multiple letters from the strata, the Landlord stated that the noise complaints from the strata have not stopped.

The Landlord stated that it has been multiple other tenants who have complained, as noted in the letters from the strata corporation. The Landlord stated that the tenancy needs to end as he cannot keep receiving the strata complaints and fines regarding noise concerns in the Tenant's rental unit.

The Tenant testified that he never agreed to pay the fines as he does not believe that the accusations from the strata are valid. He stated that he did have a motor in his rental unit beginning in early May 2019 and that it was installed back into his car on June 27, 2019 after it was refurbished. He noted that the motor was not unsanitary or unclean and that working on it quietly and occasionally in his rental unit was not a violation of any bylaws.

The Tenant expressed his belief that the complaints are coming from one other resident who lives below him who he stated verbally assaulted himself and a friend while installing the motor on June 27, 2019. The Tenant stated that the Landlord attended the rental unit on June 27, 2019 and confirmed that the motor was no longer in the rental unit.

The Tenant stated that the letters from the strata emphasize noise from working on the motor, despite the motor being out of the rental unit as of June 27, 2019. He also questioned why none of the complaint letters from other residents were included in the Landlord's evidence or with the strata letters.

The Tenant stated that due to the unfounded noise complaints being brought up, he started to keep a daily diary of activities. He submitted a copy of this diary into evidence to show that he was not creating excessive noise during the times complaints were made.

The Tenant also submitted a statutory declaration signed and witnessed on September 19, 2019. In the declaration, the Tenant provides a timeline of events. In the declaration, the Tenant also disputes the timing of some of the noise allegations in the strata letters, including accusations of noise on dates when he was not in the rental unit or not making noise as per his diary of activities. The Tenant also outlined the process of disassembling and re-assembling the motor through mostly the use of quiet hand tools.

The Tenant stated that he had advised the Landlord that his mother was coming to visit from July 22 to July 26, 2019. He submitted a witness statement from his mother dated August 4, 2019. In the written statement, the Tenant's mother outlines the concern her son had with making everyday noise in the rental unit given the issues that had come up from the strata and the downstairs neighbour. She also outlines day to day noise that occurred while she was in the rental unit such as talking, walking around, and cleaning including vacuuming. She also noted that there was a loud banging at one point which they believe to have come from the downstairs neighbour banging on the ceiling despite them being cautious about keeping noise levels down.

The Tenant also submitted a statutory declaration from a friend, signed and witnessed on August 5, 2019. In the declaration the friend outlines the events that occurred when he helped the Tenant with the motor including an incident on July 27, 2019 with another resident in the building while installing the motor. In the declaration the friend states that the other resident was confrontational and aggressive regarding questioning whether the motor would be entering the building.

The Tenant also applied for monetary compensation in the amount of \$350.00 which he stated on the application as compensation for \$200.00 of strata fines and \$150.00 for a move-out fee. The Tenant confirmed that he did not pay the strata fines and that the move-out fee was filed for in case he had moved out by the time of the hearing.

The Tenant expressed his concern that should the tenancy continue there will still be the issue of whether he is responsible for the fines and stated that he would like a decision on whether he is to pay these fines or not. The Tenant also noted seeking reimbursement for costs of photocopying and sending registered mail, although this was not applied for on the application.

Analysis

The parties were in agreement that the Tenant was served with the One Month Notice on July 26, 2019. As stated in Section 47(4) of the *Act*, a tenant has 10 days to dispute the One Month Notice. The Tenant filed the Application for Dispute Resolution on

August 6, 2019, which although 11 days after receipt of the One Month Notice is within the time allowable given that the 10th day of August 5, 2019 was a holiday. Therefore, I find that the Tenant applied within the timeframe provided by the *Act* and as such, 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. I also note that when the parties to a dispute resolution proceeding provide differing testimony about what occurred, it is up to the party with the burden of proof to submit sufficient evidence to support their testimony.

The Landlord provided letters from the strata regarding concerns with noise complaints including renovation noises, banging, and moving of heavy objects. However, I do not find sufficient additional evidence before me to establish that the noise was coming from the Tenant's rental unit and not another unit in the building. In the absence of evidence to support the Landlord's claim such as letters from other residents in the building, photos, audio recordings or other information, I find that I am not satisfied that the Tenant is responsible for the noises as outlined in the letters from the strata.

The Tenant also submitted significant evidence regarding the events that occurred including two witness statements. I find that the witness statements support the Tenant's testimony that significant noise has not been occurring from his rental unit and that some of the complaint dates may not match the activities occurring in the rental unit at that time. As such, I find that the Tenant's evidence brings into question the legitimacy of the complaints from the strata and that the Tenant is responsible for the noises. In the absence of sufficient evidence from the Landlord, I find that I am not satisfied that the Landlord has met the burden of proof to prove, on a balance of probabilities, that the reasons for the One Month Notice are valid.

Therefore, the One Month Notice dated July 26, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Regarding the monetary claims of the Tenant, I refer to Section 7(1) of the *Act* which states the following:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Although the Tenant applied for compensation in the amount of \$350.00, I do not find that he experienced a monetary loss in this amount. The Tenant provided testimony that he did not pay the \$200.00 strata fines and as he is still living in the rental unit, did not pay a move-out fee either. As such, I do not find that the Tenant is owed any money.

I also decline to award compensation for money spent on photocopying or registered mail costs as the Tenant did not apply for these costs on the application. I also note that fees such as these are not normally awarded and instead that they may be incurred by both parties through the dispute resolution process.

The Tenant stated at the hearing that he wanted a decision regarding whether or not he is responsible for the strata fines. However, as stated by rule 6.2 the hearing is limited to the claims on the application and I do not find that a dispute over the strata fines was the matter before me. The Tenant applied for compensation for the fines, but as stated as the fines were not paid by the Tenant I find this claim to be irrelevant. The parties may choose to work this out between themselves and/or with the strata or both parties are at liberty to file a new Application for Dispute Resolution should the believe they have reason to do so.

The Tenant's application for monetary compensation is dismissed with leave to reapply as I find that the Tenant applied for compensation prior to experiencing a monetary loss.

As the Tenant's application to cancel the One Month Notice was successful, 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 the next monthly rent payment as recovery of this fee.

Conclusion

The One Month Notice dated July 26, 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 as recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant's monetary claims 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: October 10, 2019

Residential Tenancy Branch