



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On October 25, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated October 21, 2019, (“the One Month Notice”).

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord provided digital evidence in response to the Tenant’s application to dispute the One Month Notice to End Tenancy for Cause. The Landlord provided the Residential Tenancy Branch with 11 audio recordings and two image files. The Landlord testified that she provided disclosure of her evidence to the Tenant by providing a usb thumb drive containing the digital files.

The Tenant testified that she received the usb drive from the Landlord; however, she was not able to view the digital files. She testified that she is not computer savvy. She testified that the usb drive does not look like a typical usb thumb drive. She testified that when she inserted the drive into her computer nothing happened.

The Tenant testified that the Landlord contacted her to confirm that she could view the files and the Tenant informed the Landlord that she could not view the files.

The Residential Tenancy Branch Rules of Procedure 3.10.5 Confirmation of access to digital evidence provides the following information:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

I find that the Landlord contacted the Tenant to confirm the she was able to gain access to the digital evidence; however, when the Landlord was informed that the Tenant could not access the files, the Landlord had an obligation to explore other means of ensuring that the Tenant could access the video files and respond to the evidence.

I find that the Tenant has not had an opportunity to consider and respond to the Landlord's digital evidence. I find that it would be unfair to the Tenant for me to consider evidence that the Tenant is not aware of. For the reasons provided above, the Landlord's digital evidence is excluded and will not be considered.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began on June 30, 2019, as a one-year fixed term tenancy to continue until June 30, 2020. Rent in the amount of \$1,150.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$575.00.

The Landlord served a One Month Notice to End Tenancy for Cause to the Tenant by posting it to the door on October 21, 2019. ("the One Month Notice"). The One Month Notice has an effective date (the date the Tenant must move out) of November 30, 2019.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

Tenant or a person permitted on the property by the Tenant has:

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*

In the One Month Notice, the details of the cause are as follows:

Landlord has documented .3 separate occasions where excessive noise from the basement suite was an issue from September 10 to September 20, 2019. A subsequent letter was left on the tenant's door dated September 23, 2019 informing the tenant of the noise violation and requested that the noise originating from the basement suite be kept at a minimum including loud conversations, slamming doors, banging walls, yelling and screaming.

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on October 25, 2019 within the required time period.

The Landlord testified that she is a single mother who rents out a basement suite in her home to supplement her income. In support of the One Month Notice the Landlord testified that everything was fine for the first three months until the Tenant's boyfriend started coming around in August. The Landlord testified that in September her daughter reported to her that she heard the Tenant having relations with her boyfriend. The Landlord also testified that her daughter reported screaming and loud play for about five minutes.

The Landlord testified that she had a conversation with the Tenant about excessive noise. The Landlord testified that the Tenant refuses to speak to her, and the Tenant's boyfriend tries to intimidate her. The Landlord testified that she posted a warning letter on September 23, 2019.

The Landlord testified that the noise continued after serving the warning letter and the Landlord issued the One Month Notice. The Landlord testified that instead of accepting the Notice, the Tenant has stayed in the unit and has continued to make noise.

The Tenant provided testimony in response to the Landlord. The Tenant testified that the Landlord invited her upstairs into her home to have a conversation, and also attempted to speak about her concerns in front of the Tenant's 8-year-old daughter. The Tenant testified that it was not a good time to speak.

The Tenant testified that the Landlord does not want to speak about concerns on the phone. The Tenant testified that she phoned the Landlord and the Landlord refused to speak to her on the phone. The Tenant testified that's he does not feel comfortable going upstairs into the Landlord's home.

The Tenant testified that the walls separating the units are thin and everything happening upstairs can be heard downstairs.

The Tenant testified that the Landlord called her on September 18, 2019 about noise and informed her that her daughter had a migraine. The Tenant testified that there was only noise for 5 minutes and it was 3:15 pm in the afternoon.

The Tenant testified that her boyfriend is not aggressive towards the Landlord.

The Tenant testified that she was playing Christmas music around 8:00 pm and the Landlord called the police who attended and commented that they cannot believe they had been called and the Police wished the Tenant a goodnight.

The Tenant testified that she told the Landlord that they are going to hear each other occasionally. The Tenant testified that children playing is not a proper reason to end a tenancy.

The Tenant testified that the Landlord has acted improperly by holding her mail and telling the Tenant's ex-husband that she is being evicted.

Analysis

In the matter before me, the Landlord has the burden to prove that the reason for ending the tenancy is sufficient. The One Month Notice indicates that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Based on the evidence and testimony before me, I make the following findings:

The Landlord provided a copy of the tenancy agreement that provides a term for Quiet Enjoyment. The agreement provides that the Tenant agrees not to cause or allow any noise or activity on the premises which might disturb the peace and quiet of another resident and / or neighbor. The agreement provides that the Tenant shall not disturb the quiet enjoyment at any time and more particularly between the hours of 9:00 pm and 8:00 am weekdays and 10:00 pm and 8:00 am on weekends.

A Tenant has the right to the covenant of quiet peaceful enjoyment; however, a Landlord does not have the same reciprocal right. I find that the Landlord's concerns about noise are not due to complaints she has received from another Tenant.

The Tenant testified that the walls are thin and that she can hear the Landlord above her; and the Landlord reported that noise was heard coming from downstairs. I find that it is more likely than not that due to the character of the rental property, there will be some noise transfer between the units. There is insufficient evidence to support that the Tenant has caused noise to intentionally disturb the Landlord. It appears to me that the Tenant is simply going about with her day to day living and activities. I find that the description of the noise provided by the Landlord does not rise to the level of significant interference or unreasonable disturbance to the Landlord.

I find that the Landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated October 21, 2019.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for

dispute resolution. I authorize the Tenant to withhold \$100.00 from one future rent payment.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated October 21, 2019, is successful. The One Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: December 18, 2019

Residential Tenancy Branch