



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC; RP; FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on August 6, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 2, 2020. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

The tenants and landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. Witnesses appeared for either party, and all parties affirmed an oath at the commencement of the hearing.

Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded. Witnesses appeared for both parties – these individuals were duly sworn in and attended the portion of the hearing concerning their direct testimony only.

Preliminary Matter

In their Application on August 17, 2020, the tenants specified they are seeking an order compelling the landlord to make repairs to the unit. This is for “the lock to the unit to be fixed”. They made this “twice with verbal request, twice in writing.” I did not review this issue in the hearing. Neither of the parties raised the issue in the hearing, focusing instead on the more immediate issue of the One-Month Notice.

On my review of the evidence provided by the landlord, I note a purchase order of August 18, 2020. This is for lock replacement, showing the rental unit number of the

tenants here. On this basis, I sever this issue from this dispute resolution, and I conclude the issue was already addressed and rectified by the landlord as shown in the record.

Issue(s) to be Decided

Are the tenants entitled to an order to cancel the One Month Notice?

If the tenants are unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit?

Are the tenants entitled to a reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord presented a copy of the tenancy agreement. The tenancy began on February 1, 2015 after the tenants signed the agreement with the landlord on January 7, 2015. The rent amount is \$1,090.00 per month, payable on the first of each month. The tenants paid a security deposit of \$535.00.

The agreement contains a clause governing 'conduct':

. . .the tenant or the tenant's guest must not disturb, harass, or annoy another occupant of the residential property, the landlord or a neighbour. In addition, noise or activity. . . which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential property... must not be made by the tenant. . . nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour has been made by the landlord. The tenant . . . must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time and in particular between the hours of 11:00 p.m. and 9:00 a.m.

Both parties provided a copy of the One-Month Notice document, signed by the landlord on August 14, 2020. The copy provided by the tenant has the indication on page 2 that the landlord served this by attaching a copy to the door of the unit on August 17, 2020. On page 2 of the document, the landlord provided the reason they issued this

document: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The details follow on page 3. This sets out that the landlord received several noise complaints against the tenants. The landlord sent letters to the tenants advising of the complaints, asking them to correct the situation. The landlord gave a "breach letter" to the tenants on August 6, to advise that "by the end of August 2020 they will be served with an eviction notice." The landlord included the detail that they informed the tenants of their right to dispute the One-Month Notice within 10 days.

The landlord provided documentary evidence in advance of the hearing. These set out the series of events by way of correspondence to the tenants from the landlord, and from the neighbour of the tenants to the landlord. Additionally, there are written accounts from other residents in the rental unit building.

The series of letters starts with that of October 24, 2019. This is where the adjacent unit's neighbour complained of noise and stated: "the excessive noise . . . is completely out of hand." A log accompanies many of the successive letters to the landlord. The most common descriptor used by the neighbour is "banging on the walls". Secondly is that of children screaming and running around in the halls. This is "sounds like they are throwing huge objects against the wall or jumping off the bed or banging the bed or whatever is there into the wall slamming drawers."

There are a number of letters from the landlord to the tenants advising of complaints and passing on specific dates and descriptions as provided by the neighbour. This commenced on October 28, 2019. There are also letters from the neighbour to the landlord asking why there has been no action with the tenants. The landlord also wrote letters to two other tenants in the immediate area, asking for their input on the issue of noise.

The tenants responded to the landlord for the most part. By October 31, 2019 they responded to say "We will do best of our abilities to control the noise level. . ." On this date they also reported on an "unpleasant" first meeting with the neighbour, and provided that police visited on two separate occasions to investigate a complaint of noise from the unit.

This pattern continued through November and December 2019. On November 27, 2019 the tenants wrote to the landlord to say they felt "extremely harassed" by police

visits. They “no longer feel safe or comfortable because of complaints”. On December 10, 2019 the landlord provided the passage from the tenancy agreement noted above. On December 31, 2019 the landlord provided a letter to the tenants advising of the material term of the tenancy, that being ‘conduct’ and stated they “will be served” with a One (1) Month Notice”.

By early 2020, other tenants started to provide accounts and how they “never had an issue with [the tenants].” The landlord arranged a meeting with the neighbour, and the tenants. One meeting occurred on January 18, and a second followed on February 2. In reporting to the attendees on the meeting, the landlord stated: “It is fair to state that tenants. . . have been complaining against each other.” This outlines measures that the parties commit to, as well as the possibility of other accommodation spaces should they become available.

By April, the accusations from the neighbour resumed. The landlord advised of the current hold on evictions across the province due to emergency measures, and stated they had limited ability to offer another unit to the neighbour. They stated to the neighbour: “Your current unit is a third one you moved to. We offered this unit to you as this is a unit in the quietest building in our stock.”

By the time restrictions lifted, the neighbour queried to the landlord: “I was wondering what your plan is for [the tenant’s unit]?” The landlord’s response was to instruct the neighbour: “should you submit a written noise complaint against your neighbours . . . we will serve the tenants with One Month Notice to Terminate the Tenancy for Cause.” On August 6, the landlord issued a second ‘breach letter’ on conduct. It states: “You will be served with One Month Notice . . . by the end of August 2020.”

Through the remainder of August and September, the landlord continued with letters between themselves, the neighbours and the tenants, with the tenants providing further details of noise from the neighbour’s unit. At the end of the correspondence chain, the landlord advised the neighbour of this hearing date and time so that they could attend to provide a first-hand account of the issues with the tenants.

The tenant submitted copies of several pieces of the correspondence provided by the landlord. Additionally, they provided one piece dated April 30, 2020 where “the undersigned” – being the tenants and two other tenants from two other separate units – state “We enjoyed living here until [the neighbour] moved to [the neighbour’s unit] a few months ago.” Further: “[The neighbour] started [their] tenancy with aggressive

behaviour in various ways towards surrounding neighbours and continues doing so after two public meetings. . .” And: “We would not move out because of fictional complaints against us.”

The tenant also submitted a copy of their letter to the administrator of the landlord society outlining the history of the situation.

The neighbour of the tenants, along with another witness, attended the hearing to speak to the issue. They briefly summed up their experience from the time they moved in approximately one year ago. They stated there were two meetings in early 2020, with positive results, then with social measures restricted because of public health concerns “all hell broke loose again.” They mentioned they were subject to noise complaints on their own, and briefly outlined they had received a letter outlining a list of incidents. The witness they brought along stated their evenings typically end around 10pm. During one incident of noise, they “put their ear against the floor” in order to determine the precise source of noise, then discovered it was from the tenants’ unit. After their oral testimony, these two witnesses exited the hearing.

The landlord ran through the history once again, starting from the time of the first complaint against the tenants. The neighbour since that time was “insisting that the landlord do something”. They reiterated that they had not complaints prior to the neighbour’s move-in.

The landlord briefly outlined their experience with the neighbour, who they assisted to move from a prior different building due to a difficult issue with noise. They cited a previous arbitration decision where they had to pay a monetary amount to the neighbour. This current unit for the neighbour is “the best that I could find for [them]” – another statement that the landlord moved this neighbour due to their prior complaints of noise.

Four witnesses attended the hearing to speak on behalf of the tenant. Points of their testimony included the following:

- when the neighbour moved in to their unit, they started several complaints against other tenants – this affects everyone in the whole building;
- they have seen what accusations have done to the other tenants;
- within days of moving in, the neighbour encouraged others to “gang up” to get the landlord fired;

- noise in the building travels from odd locations – a lower unit on the other side may travel to an upper unit;
- a separate witness stated they started to document noise complaints on their own when they started hearing of others' complaints – these were against the neighbour;
- during the meetings, the neighbour started talking down to other attendees to the degree that was considered "bullying" and one participant went through "seizure-like symptoms" – this was described with emotion in the hearing;
- at one meeting the neighbour started to show aggressive tendencies and did not let others speak;
- overheard noises coming from the neighbour's own unit at night – this includes shouting and screaming.

One of the tenants present in the hearing reiterated that they have never had any complaints about noise before. The visits from police, in particular, were distressing. This tenant's submissions in the hearing were an expression of emotion. They presented that they made numerous adjustments in the apartment and are conscious of their movements at all hours of the day. One example of this is walking on tiptoes.

Analysis

Section 47 of the *Act* states, in part:

(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord provided all correspondence in the matter and spoke to the reasons in oral testimony; however, I find the evidence presented is not legitimate. This invalidates the notice.

There is an abundance of evidence to show that noise was an issue; however, all the evidence shows it is an issue for one individual who lives beside the tenants. There is no record of other neighbours complaining of noise from the tenants. The landlord did

show that early on when the problem arose, they solicited input from other units with due diligence and attention toward the neighbour's concerns. There is no evidence stemming from this that other neighbours from other units raised an issue. Given the thoroughness of the landlord's records – with meticulous dialogue and communication – I am satisfied that no other neighbours raised concern with the tenants. This diminishes the complaints of the neighbour in that they are not independently verified.

A second witness in the hearing provided that they laid on the floor with their ear down to determine the source of noise. In a building with many units, I find this does not stand as verification that the sound was emanating from the tenant's unit.

On the validity and legitimacy of the neighbour's claims, the descriptions of the noise would suggest unrelenting banging and non-stop screaming. This is untenable given the number of discussions had on the issue, the number of warnings and requests from the landlord to the tenants. Most importantly, the concern of the tenants in response to the complaints is legitimate and genuine. There is no evidence they were flaunting the rules or ignoring them completely.

Further, the noise, as described, is severe and constant. The descriptions are of volume and suddenness that is jarring and even shocking; however, there are no other neighbours' complaints focusing on the tenants. I find banging on walls is something that is distinct and unique. The neighbour described: "a huge bang shook the floor under couch" and "huge bangs that again shake my floor". A separate witness in the hearing described how sound travels throughout the building in unique ways; however, what the neighbour describes here is clearly intending to establish that the tenants are the source of problematic noise. Again, it is untenable that the noise would continue in this fashion. The account of the neighbour, in describing how the noise continues unabated, does not match up with the communication between the landlord and the tenants. I see the tenants were alive to the issue, responsive, and caring to correct a problematic situation brought to their attention by the landlord.

In summary, there is a single source of complaints, and the subject and severity of the noise issue is not verified.

There are two other factors that weigh into a decision on the legitimacy of the evidence. First is the overall tenor within the building. Witnesses in the hearing described a friendly atmosphere, with one neighbour emphasizing the "peace and harmony". I find the testimony provided by witnesses shows a genial and respectful environment. The

fact that neighbours would take the time to call in to the hearing to attest to this speaks volumes. There was no suggestion in any participant's account that the tenants proved to be any source of difficulty or disrespect – this also does not fit with a pattern of severe noise disturbing a neighbour that would not cease.

Secondly, the tenants themselves reiterated that they lived in the building for quite some time with no complaints about noise. Within a very short timeframe, there were three visits by the police. Where allegations of a material term breach arise, I find the long-term established tenancy is relevant and carries significant weight in my consideration of complaints within a comparatively shorter timeframe.

These two considerations gel together to establish that the complaints against the tenants arose when their neighbour moved into the adjacent unit. The conduct of the neighbour toward other building residents came out in descriptions of the general meetings convened by the landlord. This shows difficult and one-sided communication. One witness in the hearing was in distress over the communication from the neighbour to them. The tenant also described their first interaction with the neighbour where that individual stated, "I know how the system works I will get you out."

Finally, there are two distinct points about the evidence of the complainer that I find diminish the weight of the complaint logs and other communication they initiated. First is the complaints of noise as arising from their own unit – the neighbour addressed this in the hearing. I do not decide on the merit of the claims concerning the neighbour's unit; however, it does detract from the weight of the evidence they present.

Secondly, the landlord stated that they initiated the move for the neighbour, from another unit they manage. This was due to the neighbour's complaints of noise from the adjacent unit. The landlord provided this adjacent unit next to that of the tenants with some degree of assurance that this was one of the quietest units within their purview. This reveals a sensitivity from the neighbour to noise; this in turn draws down the accuracy of the neighbour's evidence the landlord presented to justify issuing the One-Month Notice.

I find the complaints are inflated, and, on a balance of probabilities, fabricated. The evidence provided by the tenants and the oral testimony of other occupants in the building show the complaints to be less than genuine.

For these reasons, I order the One Month Notice to be cancelled.

As the tenants were successful in this application, I find they are entitled to recover the \$100.00 filing fee paid for this Application. I authorize the tenants to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One Month Notice issued on August 17, 2020 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 7, 2020

Residential Tenancy Branch