



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 16, 2020 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Landlord, the Tenant, and an interpreter for the Tenant ("Interpreter") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord said that he had received the Tenant's Application and Notice of Hearing documents, and had time to review them. Neither Party uploaded any other evidence to the RTB for service on the other Party.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 15, 2019, with a monthly rent of \$750.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$375.00, and no pet damage deposit.

The Landlord said he served the Tenant with the One Day Notice that was signed and dated September 16, 2020, and which has the rental unit address. On September 17, 2020, the Landlord served the 10 Day Notice on the Tenant by attaching a copy to the door of the place where the Tenant resides. It has an effective vacancy date of September 15, 2020, which is automatically corrected to October 31, 2020, by section 53 of the Act. The grounds for the One Month Notice were 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.

In the hearing, the Landlord said:

I want to evict the Tenant because he is annoying other tenants, who wrote down complaints that [the Tenant] has played music at midnight, waking him up and annoying him. The dates were in July 2020, [the Tenant] played music on the 10th, 11th, 13th, 18th, 24th, 27th, August 7. . . . There were arguments and the police were called because [the Tenant] was holding a hammer.

...another tenant was not annoyed by music, but he was asked by the other tenant to come over and listen to the music to see if it is loud... This is proof the music is too loud at night.

This tenant sent me a notice that [the Tenant] sent him a note saying that he was not allowed to bring guests to the unit because [the Tenant] is afraid of outside people bringing in any Corona virus, and two of them had a big argument, because [the Tenant] talked about installing cameras, and the other tenant feels threatened. That is why I feel that [the Tenant] had annoying habits that annoy others and it is not good for the building. The other two tenants said they would

be moving out if I don't do anything about this, so I sent him a note that he was annoying other tenants. That's the basis of my Application.

I asked the Landlord if he sent the Tenant a warning letter that his behaviour could affect his tenancy, and the Landlord said:

Because of a change of management [the Tenant] signed a new lease in August, because before that, he paid rent to the agent, now he pays me directly. Another tenant had already told me about the unit. I talked to [the Tenant] in August that he should not annoy other tenants. I told him if he is doing that, I cannot have him as tenant.

The interpreter said that the Tenant does not agree with some of the things the Landlord said, such as:

First, I didn't have the music box so loudly to annoy the other two tenants. I checked on the sound level, it was just on #2 on my software. And every level has a meter, the first level is quiet, the second level is higher decibels – I have the sound meter that you can buy everywhere. My hearing is impaired. They checked my hearing.

The Landlord said:

What was happening was because I was told by the tenants that [the Tenant] went to sleep with the music or TV on, and he's supposed to have a blue tube or something speaker and something went wrong. [The Tenant] did not realize that and the volume was loud and because he was sleeping sometimes at midnight, sometimes at 1 a.m., 4 a.m. Because [the Tenant] didn't realize that. Even the tenant upstairs realized that there was some music coming out at midnight. If [the Tenant] turns off everything when he goes to sleep, that would be okay, but he is not doing that. I am not against him personally, but two tenants complained.

The Interpreter said that the Tenant said:

Because the other two tenants have been bringing in women, in and out so many times, and it is still happening right now and he's scared of Covid and he took a lot of pictures of these multiple women, and that's why they are upset with him and complaining to the Landlord. He took pictures because the other two tenants denied taking the other women into the premises.

The Landlord said:

Regarding the girlfriends, I asked the other two tenants already. The one who complains the most has his own bathroom inside the room. He said he has only one girl and she came in a couple times. The other tenant has only one girlfriend who is living in Edmonton, so she seldom comes to the house anyway. According to the lease, guests are allowed in the unit. If [the Tenant] has some pictures of girls, he should show me and let me take a look, but they deny that, so [the Tenant] should send me the pictures of the girls. Let me take a look, so I can show the tenants that they are lying to me. The other tenants said [the Tenant] threatened to install cameras, but it is not what he can do. It's threatening and against privacy, if he is taking pictures of other people,

The Landlord confirmed that the other tenants had not taken any recordings of the Tenant's allegedly loud music. He said that "...one's ear is sensitive enough to hear it, but recording it is not sure to work." He said that the other tenants feel frightened, because they are being watched all the time; it's kind of threatening them and psychologically unsafe, especially one time [the Tenant] was holding a hammer. "If he has concerns about people coming with corona virus, he should rent an apartment by himself, so that there won't be any people coming. It's a concern to everybody right now, the corona virus."

The Tenant said:

I'm not agreed that [the Landlord] said the two tenants have been bringing their girlfriends; there are all kinds of women. Caucasians. . ., others, not flushing the toilet, and using my toothbrush and toothpaste in the washroom.

I asked the Tenant why he did not complain to the Landlord, and he said: "I did complain and [the Landlord] came into the place and cleaned up, because there were hairs all over the floor from all these women."

I asked the Tenant about the hammer incident, and he said:

We got into the hammer, because I was getting ready for work. I start at 6 a.m. in the morning. The hammer is a light hammer – half a pound, and I use it to repair the electrical things in my work place, I was putting it in my lunchbox. I heard the door knock and I opened the door and the hammer was in my hand. But I was sorting my tools for the next day. I was not intending to threaten them, and I

showed the police officer.

I just wanted to address that this is not about loud music or TV or because I have complained to the two tenants about the multiple women they are bringing and using the washroom. At work there are 30 of us. I'm in my 60s and I am scared of the corona virus. They make up that I'm having all kinds of loud music and TV on, but that's not the case.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I explained the burden of proof, which is set out in Rule 6.6:

Rule 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, I started by asking the Landlord why I should confirm the One Month Notice, rather than cancelling it, as the Tenant has applied for me to do. In the evidence before me, I have a "he said versus he said" situation. In this case, if the Landlord has not provided sufficient evidence to support the One Month Notice, I must find I favour of the Tenant.

I find that this situation has conflicting agendas on the part of the other tenants. From the testimony I heard, it appears that the other tenants are concerned that the Tenant may have proof of their indiscretions with guests entering the residential property.

There are no statements before me from the complaining tenants about the Applicant. There is no recording of loud music being played late at night. Further, the Tenant has

expressed that he is aware of the implication of loud music on other people, as he said he has equipment to measure the decibels. I find it consistent with common knowledge and ordinary human experience and that a normal conversation takes place at 60 decibels. As long as the Tenant's music or television is not louder than that, there should be no problem.

The Landlord did not submit a copy of the tenancy agreement, which sets out hours during which music or other noise is allowed to be played in a tenant's rental unit, but the Landlord may consider adding such a term with the consent of the other party to the tenancy agreement, pursuant to section 14 of the Act.

Based on the evidence before me overall, I find that the Landlord has not provided sufficient evidence to support the validity of this One Month Notice. Accordingly, I cancel the One Month Notice; it is now of no force or effect. The tenancy continues until ended legally in accordance with the Act.

Given the Tenant's success in his Application, I also award him with recovery of the \$100.00 Application filing fee. The Tenant is authorized to reduce one upcoming rental payment by \$100.00 once in full satisfaction of this award.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act. The Tenant is awarded recovery of the \$100.00 Application filing fee. He is authorized to reduce one upcoming rental payment by \$100.00 once in full satisfaction of this award.

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 30, 2020

Residential Tenancy Branch