



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On November 18, 2020, 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 November 13, 2020 (“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 Tenant’s application for dispute resolution included a copy of a One Month Notice to End Tenancy for Cause dated November 13, 2020; however, the second page of the Notice that provides the reasons for ending the tenancy was missing. The Tenant testified that the Landlord never served him with page 2.

The Landlord did not provide a copy of the One Month Notice within his documentary evidence prior to the hearing. The Landlord testified that he served all three pages of the Notice to the Tenant, and the reason cited for ending the tenancy is Tenant or a person permitted on the property by the Tenant has *significantly interfered with or unreasonably disturbed another occupant or the Landlord*.

The Tenant and advocate submitted that the Tenant knew the reason for the Notice because page 3 of the Notice provided details of cause.

Section 68 of the Act provides that if a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and (b) in the circumstances, it is reasonable to amend the notice.

I find that the Tenant knew the information that was missing from the Notice and was prepared to make submissions in response to the Landlord's Notice.

The hearing proceeded. The Landlord provided the Residential Tenancy Branch a copy of the One Month Notice after the hearing had ended.

Issue to be Decided

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

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 1, 2019 and is currently on a month to month basis. Rent in the amount of \$725.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$362.50.

The Landlord served the One Month Notice to the Tenant on November 16, 2020. The Notice has an effective date (the date the Tenant must move out) of December 31, 2020.

The Landlord selected the following reason 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.*

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 November 18, 2020 within the required time period.

The Landlord was asked to explain why the tenancy should end. The Landlord provided testimony that he received complaints from other occupants about noise coming from the Tenant. The Landlord testified that he received the complaints via email and text messages. The Landlord was asked to provide details such as when the noise occurred. The Landlord stated that he does not know the times. The Landlord did not provide a copy of the actual complaints he received from other occupants.

The Landlord was asked whether he personally observed/ heard noise coming from the Tenants rental unit and he replied "no".

The Landlord provided copies of two warning letters dated September 29, 2019 and October 15, 2020.

The Landlord was asked how the Tenant responded after receiving the warning letters. The Landlord testified that the Tenant stated to him that the noise was not coming from him.

In response to the Landlord's testimony, the Tenant testified that he is a disabled senior who falls asleep in front of his television and does not make noise.

The Tenant testified the building has poor sound insulation. He testified that he has been asleep when others have accused him of making noise. He testified that he is not the one making noise.

In the Tenant's application the Tenant writes:

The building is an old movie theatre that was made into apartments. My ceilings are only 7 foot high. The carpets are old and worn out. I hear the music coming from the apartment underneath mine constantly in addition to telephone conversations and people having conversations in the unit. I am a tall man and weigh approximately 280 pounds so it is accurate that the person in the suite below me would hear me walking across her ceiling. I never wear shoes in my apartment and have bare feet at all times in my apartment. I can hear televisions playing on my floor as well. In this building people will hear everyday sounds. The man who lived in the unit below me never complained about any noise but

he did tell me that he could hear me talking just as I heard his talking. There have been no complaints from other people on my floor. The tenant below me (the new one) is always coming to my unit to complain about noise but I have few visitors and I feel harrassed. This building is old and not very soundproof - we all hear noises in the building - daily.

The Tenant had a witness present who stated he is also an occupant of the residential property. The witness testified that the nature of the building is that you hear noise constantly. He testified that you can hear people doing dishes and that any noise is normal living noise.

Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons for ending the tenancy in the Notice are valid. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord has not provided sufficient evidence that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord did not hear the noise himself and did not provide details on what the noise was and when it occurred. The Landlord did not provide copies of complaints made by other occupants.

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 November 13, 2020.

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 his 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 is successful. The One Month Notice issued by the Landlord dated November 13, 2020, 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: February 10, 2021

Residential Tenancy Branch