



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenants confirmed receipt of the 1 Month Notice to End Tenancy dated January 17, 2021. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2020, with monthly rent currently set at \$1,200.00, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$600.00 each deposit. The tenants reside in the upper suite in the home, while there is a bachelor suite and a 1 bedroom suite on the lower floor.

The landlord served the tenants with a notice to end tenancy on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenants were served with the 1 Month Notice due to the excessive noise and disturbance caused by the tenants. The landlord testified that they had no choice after receiving numerous complaints from the tenants in the suite below. The landlord submitted statements from the tenants, including from one of the tenants who is deaf in one ear. The landlord testified that she had exhausted her options as the level of anger and frustration has escalated amongst the tenants. The landlord testified that the home was built sometime between 1968 and the early 1970s, and testified that she did mention to the tenants that the home was older, and had no soundproofing. The landlord testified that the tenants continue to make loud noises and disturb the tenants below them at night despite the fact that they knew that noise carries in the home. The landlord testified that she had considered soundproofing upgrades, but that this would be an extensive and expensive undertaking that could not be done during this tenancy due to budget constraints.

The tenants testified that they were warned that they were moving into an older home which squeaks, but were not told about the lack of soundproofing. The tenants testified that much of the complaints from the tenants below pertain to normal living noise such as turning on taps, making tea, or flushing the toilet. The tenants testified that the cats referenced no longer live in the home. The tenants deny that they had ever intentionally disturbed the other tenants, and that the home's lack of soundproofing has made it difficult for all the tenants in the home. The tenants testified that they cannot even use the third bedroom in their rental unit as it would disturb the tenants below. DD, mother of one of tenants, testified in the hearing that they could not walk on certain parts of the floor or open the sliding door before 8:00 a.m. as this would cause too much noise. DD testified that she would need to take her medication at certain hours with food, and would have to avoid using the kitchen during certain hours in case it made too much

noise. DD testified that she also had to avoid flushing the toilet past 10:00 p.m. DD testified that it was extremely stressful as the noises would aggravate one of the tenants downstairs to the point that the tenant would bang and shout.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the evidence and the testimony before me, and I find it undisputed that the tenants in the lower suite have been significantly disturbed by the noise originating from the upper suite in the home. In light of the testimony and evidence before me, however, I do not find that the tenants in this dispute have intentionally or unreasonably disturbed the other tenants in the home. In fact, I find that due to the age and construction of the home, the lack of soundproofing between the units has significantly reduced the enjoyment their suite for all the tenants in the home, including the tenants in this dispute. I accept the testimony of the tenants and the tenant's mother that they are unable to perform normal tasks such as flushing the toilet, making food or tea, or using certain parts of the home. Although the landlord may have communicated to the tenants in the home that the home does not have much or sufficient soundproofing, I find that the tenants are entitled to reside in the home without fear while performing normal functions such as flushing the toilet or making a meal or drink, regardless of the time of day. Although I am extremely sympathetic towards the affected tenants in the lower suite, I find that it would be unreasonably and unfair to uphold a Notice to End Tenancy For Cause when the main cause of the disturbance and noise is the lack of soundproofing in the home rather than the specific actions of the tenants. I am not satisfied that the tenants in this dispute have significantly interfered with or unreasonably disturbed another occupant or the landlord.

Under these circumstances, I am allowing the tenants' application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice. The 1 Month Notice dated January 17, 2021 is cancelled, and is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: April 19, 2021

Residential Tenancy Branch