Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

The tenants dispute a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act").

Arbitration hearings occurred on March 18 and June 29, 2021. Attending the second hearing were the tenants, two employees of the corporate landlord, and, a witness for the landlord. No service issues were raised, the landlord's witness was affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Are the tenants entitled to an order canceling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on May 1, 2014. Monthly rent is $1,031 and the tenants paid a $480 security deposit. A copy of the written tenancy agreement is in evidence.

On December 4, 2020, the landlord served, by registered mail, the Notice on the tenants. A copy of the Notice was submitted into evidence. Page two of the Notice indicated two reasons why it was being given: (1) the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, and (2) there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Page three of the Notice, under the “Details of Cause(s)” section, includes the following information (reproduced as written by the landlord):

> THE TENANTS HAVE REPEATEDLY BEEN TALKED TO AND WRITTEN TO ABOUT THEIR BEHAVIOUIR AS FAR BACK AS 2016. THIS INCLUDES LOUD ARGUEMENTS , LOUD TELEVISION NOISE, DOING DISHES IN THE EARLY MORNING HOURS, SMOKING ON THE DECK, THROWING BEER CANS OFF THE DECK, AMONG OTHER THINGS.
>
> THE TENANTS HAVE FAILED TO MODIFY THEIR BEHAVIOUR EVEN AFTER THESE REPEATED REQUESTS TO DO SO.
>
> TO ALLOW THIS TENANCY TO CONTINUE WOULD BE UNFAIR TO THE OTHER TENANTS.

The landlord’s agent (henceforth “landlord” for brevity) gave evidence that the tenants have “repeatedly and relentlessly disturbed others” in the multi-rental unit property. The incidents, primarily consisting of noise, are numerous, and they span the entire length of the seven year tenancy. The complaints have been many, by different occupants, and are varied. Submitted into evidence by the landlord was a lengthy collection of incident reports and correspondence between the landlord’s representatives and the tenants concerning the ongoing noise disturbances. There are in evidence numerous complaints.

An employee and building manager for the landlord briefly testified about a particularly troublesome noise incident on December 23, 2021. The interaction between him (J.A.) and the tenants was not positive.

The landlord’s main witness (T.F.) provided lengthy and detailed testimony regarding his prolonged experience in dealing with the tenants’ noise. The witness lives directly below the tenants. He has had to endure more than four years of noise issues, and this does not only include dishes being washed at all hours of the day. (The dishwashing noise was a not insignificant part of the noise problems.) The noise disturbances have been ongoing and have included noisy vegetable chopping late into the night and pots and pans banging around. In addition to the noise, the tenants have apparently littered by tossing beer cans down, landing in the bushes near the witness’ balcony.

Over the course of the past four years, according to the witness, four different building managers have had to address the tenants’ noise-making. The witness has resided in the property for nine years.

The police have attended to the property at least ten times, primarily to deal with the tenants' domestic fights. (A copy of a police witness report was in evidence.) The tenants stomp around endelessly, and the witness finds the tenants' behavior "childlike and embarassing." Since the start of the pandemic, the noise has affected the witness even more: he works remotely from home, and his calls and Zoom meetings have been interrupted by the tenants' noise. Finally, the witness explained that the residential property is a wood-frame building with no insulation between floors.

Continuing, the witness testified that the previous tenant of the rental unit caused no noise issues. However, the tenants create an intolerable environment for the witness, including laughing loudly when intoxicated ("machine gun laughter" is how he described it), and, it appears, finding it acceptable to communicate by shouting across the room at each other. "These tenants aren't ever *not* noisy," the witness exclaimed.

Recently, the witness has resorted to wearing industrial strength earplugs. His sleep has been seriously disturbed and his job performance has been affected. The tenants, the witness opined, have "a complete lack of empathy" for others in the building. Further, the witness believes that the tenants have no respect for any authority (such as the landlord) who request a change in behavior.

The tenants did not cross-examine the landlord's witness, though the opportunity to do so was offered a couple of times. However, the tenant (C.L.) disagreed with the witness' testimony and remarked that his testimony was "just an opinion." She also denied the accusation that they had thrown beer cans over the balcony, moreso given that the male tenant does not drink alcohol. The tenant also noted that the street on which they reside is subject to the types of passersby who might throw beer cans into the bushes.

The landlord then argued that the tenants have breached a material term of the tenancy agreement. Specifically, term 18 of the tenancy agreement, which states (excerpt):

> CONDUCT. In order to promote the safety, welfare, enjoyment and comfort of other occupants and tenants of the residential property and the landlord, 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 behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant of the residential: property or other person, must not be made by the tenant or the tenant's guest, 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 or the tenant's guest 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 10:00 p.m. and 9:00 a.m.

The tenants have created consistent and ongoing noise disruptions and have been repeatedly warned about this breach, explained the landlord. Copies of these warnings are in evidence. Further, the landlord clarified that “it is not just about the dishes,” and that there are much more disturbances than simply late-night dishwashing. There are, as noted in the evidence, consistent and loud arguments between the tenants: “there is no end to arguments between the tenants,” she added. These disturbances have not stopped, and, while the tenants appear apologetic, their behavior has not changed.

The tenants denied “a lot of the comments made.” They never insulted the building manager, as alleged, and only raised their voice out of frustration. Regarding the incident on December 23, 2020, the noises complained of were not those of the tenants. In fact, the tenants testified that they were sound asleep until 10 AM, and thus could not have been source of the noise. The tenants are “upset” about the details of what has been going on that are being raised in the hearing.

In respect of the late-night dish washing, the tenants testified that water records from the municipality (if they had been obtained) would have proven that they do not wash the dishes at night.

As for the witness’ testimony, they again argued that it is merely an opinion, and one that is “amusing.” They argued that perhaps the witness is simply sensitive to noise. Moreover, the witness is apparently a “chronic complainer.” Other people in the building also have found that the witness is a chronic complainer, according to the tenants.

The tenants now live their lives walking on eggshells and “can’t even brush our teeth” without worrying about the next complaint. Quite simply, they restated, the witness has an issue with noise. The tenants acknowledge that with the pandemic, people are staying home a lot more, and many are more sensitive to noise than others. However, they also pointed out that the building does not insulate sound between the many rental units, and indeed they can “hear people fart [. . .] and pee.” The complaints are unreasonable, and the complaints all originate from just one person.

In rebuttal, the landlord testified that she does not believe the witness to be a chronic complainer. According to the landlord, the witness has not complained about anyone else in the building.

In rebuttal, the tenants stated that the witness admitted in his own letter to having previously complained about another tenant's blender, an exercise machine, and, even about seagulls on the roof.

Analysis

When a tenant disputes a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice was given. A "balance of probabilities" means that the administrative decision maker finds it more likely than not that the facts occurred as claimed.

The Notice was issued under sections 47(1)(d)(i) and (h) of the Act. Section 47(1)(d)(i) of the Act states that

> A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [...] the tenant or a person permitted on the residential property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

And subsection 47(1)(h) of the Act states that

> A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [...] 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 dispute, the landlord's witness provided detailed testimony regarding the ongoing disturbances caused by the tenants. The supporting documentary evidence consists of not only the complaints made by the witness, but also those complaints from other occupants of the building (including the occupant or occupants residing above the rental unit), and this evidence – in conjunction with the witness' oral evidence – persuades me, on a balance of probabilities, to find that that the tenants have in fact significantly interfered with and unreasonably disturbed other occupants of the residential property.

The lengthy, well-described and articulated details provided in the correspondence between various parties as far back as January 2017 clearly establish that the tenants are unable to refrain from unreasonably disturbing others. And, contrary to the tenants' suggestion that it is just the tenant living below them who has complained, the documentary evidence proves otherwise.

As an aside, it is certainly not lost on me that perhaps the witness is overly sensitive to noise. However, his complaints are not about the regular sounds of an occupied uninsulated wood-frame building (such as people walking about, engaged in personal business in the bathroom, or, even, the noise of seagulls on the roof), but rather, it is with the ongoing and unrelenting excessive and unreasonable noises which often involve yelling and shouting and banging. These are not the normal and ordinary sounds of a peaceful, residential building. Had the only noise complaints been about nocturnal dishwashing, then it would give me pause to consider the seriousness of the issues.

While the tenants disagreed with the landlord's claims – specifically, and with an emphasis on the noisy washing of dishes – they were conspicuously silent about the many instances of noise complaints about their domestic disturbances that have plagued the building and disturbed others since 2017. The tenants provided a detailed account of their morning routine but said nothing about the countless incidents of noise disturbances complained of during the tenancy. And, while I have considered the tenants' written submissions, the many complaints over the years were not explained or even addressed.

Further, I find it rather telling that, instead of denying that they have created all of these noise disturbances over the years (often resulting in police attendance) – which one would expect from a reasonable person faced with such accusations – the tenants instead chose to portray the witness as a chronic complainer. To be frank, I was not persuaded by the tenants' position that they have not been the source of ongoing unreasonable and significant disturbances over the years to more than just one occupant of the building. It is rather amazing, in fact, that any occupant in the building tolerated these disturbances for as long as they had. Equally amazing (if not a bit perplexing), is why the landlord waited this long to issue a notice to end tenancy.

Taking into consideration all of the submissions, oral testimony, and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the first ground on which the Notice was given. The second ground (that is, the breach of a material term of the tenancy) on which the Notice was issued need not be considered. As a result, and given the above, the tenants' application is dismissed without leave to reapply.

Having dismissed their application, we turn to section 55(1) of the Act, which states:

> If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Notice has been carefully reviewed and is found to comply with section 52 of the Act. Thus, having (1) dismissed the tenants' application and (2) upheld the Notice, the landlord is granted an order of possession of the rental unit ("order").

The order is issued in conjunction with this decision, and the landlord must serve a copy of the order on the tenants. The order shall take effect two days after the tenants receive the order or are deemed to have received the order pursuant to section 90 of the Act.

Conclusion

The tenants' application is dismissed, without leave to reapply.

The landlord is granted an order of possession.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 30, 2021

Residential Tenancy Branch