



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOME LIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the Residential Tenancy Act (the “Act”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, to cancel a One-Month to End Tenancy for Cause, (the “Notice”) issued on May 21, 2021, for an order for the Landlord to comply with the Act, and to recover their filing fee for this application. The matter was set for a conference call.

An agent for the Landlord (the “Landlord”), the Tenant and two advocates for the Tenant (the “Tenants”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 Matters - Amendment

At the beginning of the hearing, the Tenants testified that they had made an error on their application by including a request to cancel a 10-Day Notice to end tenancy for unpaid rent. The Tenants confirmed that they had not been served with a 10-Day Notice to End Tenancy for Unpaid Rent.

The Landlord testified that they agreed with the Tenants and confirmed that they had not issued a 10-Day Notice to End Tenancy for Unpaid Rent for this tenancy.

I find it appropriate to amend the Tenants' application, removing their request to cancel a 10-Day Notice to End Tenancy for Unpaid Rent.

Preliminary Matters - Related Issues

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as another issue. I find that this other issue is not related to the Tenants' request to cancel the Notice. As this matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenants' claim for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenants' claim to cancel the Notice and for the recovery of their filing fee.

Issues to be Decided

- Should the Notice issued on May 21, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they served the Notice to end tenancy to the Tenants on May 21, 2021, by posting the Notice to the front door of the rental unit. Both the Landlord and the Tenants provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Landlord testified that the Tenants have been making noise complaints going back to August 2014, the year the Tenants moved into the building. The Landlord testified that the building is administered through a strata council and that they forwarded the Tenants' noise complaint to the council. The Landlord testified that the complaint was investigated by the council and was found to be unfounded, as the noise coming from the other unit was everyday life noise.

The Landlord testified that they advised the Tenants of the council's findings but that the Tenants have continued to complain about the noise they can hear coming from the unit above them. The Landlord testified that the Tenants' complaints had become disrespectful, including shouting, and swearing at the Landlord, the Landlord's staff and building staff. The Landlord testified that the Tenants' complaints had become a nuisance to the Landlord and the strata council over the past several years.

The Landlord testified that they issued a warning letter to the Tenants on March 4, 2020, advising the Tenants that their behaviour was a breach of the strata rules and that they would be evicted if the complaints and behaviour continued. A copy of the warning letter and a letter from the strata council were submitted into documentary evidence.

The Tenant testified that the Landlord has ignored their complaints regarding noise transfer from the unit above them and that this noise has severely affected their quiet enjoyment of the rental property. The Tenant submitted a written record of the dates and times they have been affected by excessive noise into documentary evidence.

The Tenants testified that they should be able to complain about the noise and their loss of quiet enjoyment and that they do not swear or shout when making a complaint.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants were deemed to have received the Notice to End Tenancy on May 24, 2021, three days after it was posted to the front door of the rental unit. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. Accordingly, the Tenant had until June 3, 2021, to file their application to dispute the Notice. The Tenant filed their application on May 31, 2021, within the statutory time limit.

The Landlord indicated two reasons on the Notice as the cause for ending the Tenants' tenancy; I will address each one individually:

1. Significantly interfered with or unreasonably disturbed another occupant of the landlord.

I accept the agreed-upon testimony of these parties that the Tenants have made several complaints to the Landlord and the strata council regarding noise transfer to their unit from the unit above them. I also accept the agreed-upon testimony that the Tenants' complaints have not been resolved to the Tenants' satisfaction and that the Tenants continue to submit further complaints regarding the noise issues.

I have reviewed the testimony in this case, and I find that the parties have offered conflicting verbal testimony regarding the level of aggressiveness involved in the verbal and written interaction of the Tenants during the submission of their complaints. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord as it is the Landlord who is seeking to end this tenancy.

I have reviewed the entirety of the Landlord's documentary evidence submissions, and I find that this evidence shows that the Tenants have made numerous complaints regarding the noise transfer between units on this property. However, I find that the Landlord's evidence is insufficient to satisfy me, that these complaints have unreasonably disturbed the Landlord or another occupant. Additionally, I noted a lack of dates of events or statements from parties who directly interacted with the Tenants during the submission of their complaints. Overall, I find that the Landlord offered a vague and general account of events that lead up to them issuing this Notice. Therefore, I find the Landlord has failed to meet the onus to establish their claim on the first reason indicated on this Notice.

2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

As for the Landlord's claim that the Tenants have continued to breach a material term of their tenancy agreement, after a written warning; I accept the testimony of the Landlord that a written warning had been given to the Tenants on March 4, 2020, 443 days before the Notice to end tenancy was issued. After reading the warning letter issued to the Tenants on March 4, 2020, I find that the Landlord warned the Tenants of possible eviction for making further complaints about noise, going as far as to remove the Tenants' right to complain about this issue altogether.

I find that the basis of the Landlord's claim on this point is that the Tenants' have been advised not to complain about noise from the occupants living above them, yet the Tenants have continued to do so.

However, a tenant's right to complain about an issue, including noise, during their tenancy is not something a landlord has a right to prohibit and contract out of in a term of their tenancy agreement. A landlord has the right to set the conditions for a tenant's

complaint; requiring that complaints are made in writing, possibly using a special form, or how the complaint is delivered to the landlord; in person, by postal service, or electronically; however, a landlord does not have the right to tell a tenant they cannot make a complaint.

The Landlord has testified that they find the behaviour of the Tenants when complaining to be disturbing; however, after reading this warning letter, I find that no written notice has been given from this Landlord to these Tenants regarding behaviour. Due to the failure of the Landlord to issue a written notice to the Tenants of a breach of a material term for behaviour, I find the Landlord has failed to meet the requirements to end the tenancy for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

Conclusively, I find that the Landlord has not proven sufficient cause to satisfy me, to terminate the tenancy for any of the reasons indicated on the Notice they issued. Therefore, I grant the Tenants' application to cancel the Notice issued May 21, 2021, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the Act.

The Tenant is cautioned that breaches of a behaviour term of their tenancy agreement or strata by-laws may result in sufficient grounds to end their tenancy. Additionally, complaints regarding your tenancy are to be made to your Landlord or the Landlord's agent, not to a third party, such as a strata council, a neighbour, or a building caretaker. If you are unsatisfied with the response you get from the Landlord regarding your complaint, your recourse is in a hearing with the Residential Tenancy Branch.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application. The Tenants are granted permission to take a one-time deduction of \$100.00 from their next month's rent in satisfaction of this award.

Conclusion

The Tenants' application to cancel the Notice, issued May 21, 2021, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent.

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: September 3, 2021

Residential Tenancy Branch