



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARHAR GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC. FFT

Introduction

On June 12, 2021, the Tenants 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 June 4, 2021 (“the One Month Notice”).

The matter was set as a conference call hearing. The Landlord’s agent (“the Landlord”) and the Tenants attended 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. The parties confirmed that they exchanged the documentary evidence before me. The parties were informed that recording the hearing is not permitted.

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.

Issue to be Decided

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

Background and Evidence

The Landlord and Tenants testified that the tenancy began on October 1, 2018 and is on a month-to-month basis. Rent in the amount of \$715.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$350.00.

The Landlord served the One Month Notice to the Tenants in person on June 4, 2021. 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 Tenants disputed the One Month Notice on June 12, 2021 within the required time period.

The Landlord provided testimony on why the tenancy should end. The Landlord testified that there are 10 rental units on the property with businesses situated below the residential units. The Landlord is the resident manager and lives in the unit adjacent to the Tenants. The Landlord stated that her bedroom wall is the Tenants' living room wall.

The Landlord testified that there is constant yelling and banging noise coming from the Tenants and the Landlord is being woken up. The Landlord stated that the Tenants have a young child who screams day in and day occurring for over a year. The Landlord stated that the Tenants have been heard fighting with each other.

The Landlord was asked if she issued any caution or warning letters to the Tenants prior to issuing the One Month Notice. The Landlord replied that no warning or caution letters or emails were sent to the Tenants. The Landlord stated that she has texted the Tenants about noise. The Landlord referred to two incidents that occurred in April and June 2021. The Landlord stated that the police were called for the incident in June 2021.

The Landlord stated that she has received no written complaints from other occupants living on the rental property; however, she stated that she has received verbal complaints from other occupants about noise from the Tenants.

In reply, the Tenants testified that the Landlord is exaggerating the issue. The Tenants stated that most of their arguments date back to April of 2020 not April 2021. The

Tenants stated that there was a lot of stress related to; the beginning of the covid pandemic; their new baby; and the start of a new job. The Tenant stated that he is a software developer working from home.

The Tenant stated that the rental building is approximately 40 years old, with wood construction and paper-thin walls. The Tenant stated that they have a corner unit with only the Landlord residing next to them.

The Tenant acknowledged that their child can be noisy at times and acknowledged that they recently had a fight in June 2021. The Tenant stated that the Landlord called him a terrible parent and made false report to police on June 4, 2021 who attended to check the child's welfare. The Tenant stated that the Landlord attended their rental unit and started screaming at them from the hallway causing all the other occupants to come out into the hall. The Tenants stated that the Landlord created this disturbance.

The Tenants stated that they have not received any formal written complaints or warning letters from the Landlord. The Tenants stated that there is not constant banging.

In response to the Tenants testimony the Landlord clarified that the April incident was in April 2020 and not April 2021.

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 and sufficient to warrant ending the tenancy. Based on the evidence and testimony before me, I make the following findings:

I accept the evidence before me that the Tenants' child can be noisy at times. Based on the evidence, it appears to me that the Tenants' child is very young, and I find that it is reasonable to accept that normal behavior for a young baby/ toddler will include making noise from crying, laughing, or temper tantrums. It is unreasonable to expect that the Tenants can control this noise from their child or control when it occurs. I find that noise from the Tenants' child is not a sufficient reason to end the tenancy.

With respect to any unreasonable disturbance to the Landlord or other occupants due to the two incidents of the Tenants fighting, I have reviewed the Landlord's documentary evidence. The Landlord did not issue any warning letters to the Tenants regarding noise and there is no documentation of noise complaints made by other occupants of the property. The Landlord did not respond to the Tenant's allegation that the Landlord contributed to the June 2021 incident/ disturbance by screaming at the Tenants from the

hallway of the rental unit. I find that the Landlord may have contributed to this disturbance and any verbal complaints received.

While I find that the Landlord did text the Tenant B.T. and caution her about noise following an incident in April 2020, I find that the Tenants should be afforded a written warning letter from the Landlord regarding any noise complaint allegations that are made.

I find that the Landlord has not provided sufficient evidence that the Tenant has unreasonably disturbed another occupant or the Landlord to the extent that this tenancy should end. However, the Tenants are cautioned that any further unreasonable noise from them that disturbs the Landlord or other occupants of the rental property puts their tenancy at risk and may result in an end to their tenancy.

The One Month Notice to End Tenancy for Cause, dated June 4, 2021 is cancelled. 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. While the Tenants were successful with their application to cancel the One Month Notice, I find that they are not entirely blameless. I decline to order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Tenants' application is successful. The One Month Notice issued by the Landlord dated June 4, 2021, is cancelled.

The tenancy will continue 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: October 20, 2021

Residential Tenancy Branch