



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equities Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, her two witnesses and two agents for the landlord.

While the landlord served evidence on 2 or 3 occasions for this hearing, I note that much of the evidence submitted in the second and third packages relates to events that occurred after the landlord's One Month Notice to End Tenancy for Cause was issued. Despite this, I have considered them but only limited to the content and timing.

I note that because this is an Application for Dispute Resolution submitted by the tenant seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a One Month Notice to End Tenancy for Cause and to an order to have the landlord comply with the Act, regulation, or tenancy agreement, pursuant to Sections 47 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 30, 2021 for a 6-month fixed term tenancy beginning on February 1, 2021 that converted to a month-to-month tenancy on August 1, 2021 for a month rent of \$1,468.00 due on the 1st of each month with a security deposit of \$725.00 paid;
- A copy of a letter dated June 25, 2021 that states the landlord has received a formal complaint from the tenant's neighbours "regarding loud noises, stomping, yelling and hitting the kids coming from your apartment." The letter goes on to quote Clause 18 of the tenancy agreement and further states that the landlord asks the tenant to not repeat the cause of the complaint. The letter closes by stating that if the landlord receives any more complaints a Notice to "Terminate" Tenancy will be served and that this letter "serves as final warning"; and
- A copy of a One Month Notice to End Tenancy for Cause issued by the landlord on August 13, 2021 with an effective vacancy date of September 30, 2021 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. In the Details of the Event(s) section of the Notice the landlord wrote:
 - "Many tenants in the building complaining about the noise coming from the unit K-304. Specifically yelling, banging the doors, stomping on the floor, crying.
 - Written complaints from various tenants in the building regarding the same issue.
 - Warning letter was issued on June 25, 2021, regarding the complaints.
 - Neighboring units continued complaining about the noise not stopping and how they are not able to sleep or rest in their own apartment.
 - Multiple times tenants come to the office regarding the issue and to request to get the quite of the building back." [reproduced as written]

In support of their position the landlord has submitted several documented complaints beginning with one letter of complaint dated June 24, 2021 signed by the occupants of units K206; K204; K102; and K104. The landlord also submitted additional complaint letters as follows:

Date of Complaint	Unit Number
July 17, 2021	K102
September 4, 2021	K102
September 6, 2021	K302
September 6, 2021	K206
December 5, 2021	K302
December 7, 2021	K102
December 7, 2021	K204
December 9, 2021	K206

The landlord also submitted that they sent a survey (dated July 27, 2021) to all the occupants on the residential property – 18 in all and that they received 6 back – two came back confirming no disturbances but four confirmed disturbances – K102; K204; K206; and K302. The 12 remaining surveys were not returned. The survey that was sent to the occupants stated:

“We have received several complaints from few of the tenants in regards to constant banging, arguing, swearing and hitting the kids for the better part of the day.

We are trying to find out if above claims are true. Could you please confirm if you ever heard any loud noises, fighting or any other sort of noise from unit 304 that is effecting your quiet enjoyment of the premises.”

The survey then provided a check box to confirm that the tenants were loud, a place to describe the disturbances which asked for specific dates and then a check box to indicate the respondent did not hear anything and has no issues with the tenants.

In the initial complaint letter (dated June 24, 2021) the writers stated that they had been dealing with a problem with this tenant for the “last few months” and that the tenant “constantly bangs, screams at her kids, hearing lots of crying and running.” The complaint goes on to say that the other occupants are hearing this for “hours on end”. The letter also states: “Furthermore, we can hear slapping and crying right after which is heart breaking to hear.” No specific dates of any disturbances were noted.

In the only other letter submitted that was dated prior to the issuance of the One Month Notice dated July 17, 2021 the writer (from unit 102) wrote: “I am still recuperating from my stay in hospital and when I get woken up hour after hour it’s a little difficult (11pm, 12am, 1, 2).” [reproduced as written]. No specific dates of any disturbances were noted.

The July 27, 2021 survey responses read as follows:

Unit Number	Survey Comments [reproduced as written]
K 102	July 16-17 it woke me up every hour on the hour starting at 11pm to (and including) 2 am with her abusive yelling. Many, many nights when the building is quiet I am woken up by her abusive yelling. (My bathroom window is on the same wall as her patio and bedroom windows)
K 204	It starts @ 7 am to 10 to 11 pm screaming, yelling, swearing @ the minor kids, the screaming from the kids crying, the banging, stomping @ all hours of the day and night. It’s a constant disturbance to me and my son. My son has been woken out of his sleep many at times and he is only 6 years old. I am up @ 5 am for work and have to sleep by 8 pm to function for my day to provide for me and my son. I pay rent to have a

	home for me and my son that has been constantly disturbed by K-304. This is now beyond exceptable and extremely unfair
K 206	Hear yelling, crying, usually every morning 8 -8:30. I hear this inside my apartment, balcony and when I'm walking my dog outside. I also hear bangs. Anther time of day is early evenings 7 – 9 pm. I hear lady yellon and one or more children crying. Its not a quiet cry, very loud, like they are hurt or in pain, more like a scream then cry. Been hearing this for 3 months, sometimes I hear lady yelling in the stairwell as well and laundry in the past. Now its all from the apartment (302). I hear noise daily, but mostly 8 to 8:30 am evenings 7-9 pm.
K302	Sporadic noise about twice weakly. During daytime hours. My daughter and I live beside the suite/family in question. Kind of noises we've heard! Screaming, yelling, crying loud arguments. Tone of noise: Explosive angry words, always something like "I've told you, get inside, you never listen!....there is slamming of doors I've never witnessed physical fighting, however it upsets me to the point of being concerned for the children's welfare. I mostly hear it through my hallway door, not my adjoining wall. Sometimes while in the bathroom at times. Cannot give specific dates. Also my daughter and myself were away from our apartment for one week, twice this past month. She (the mother figure) is private, keeps her head down if she passes by.

In the September letters each of the complainants has some specific complaints. K102 wrote on September 4, 2021 that she had been "woken up repeatedly on two nights Aug 31 and Sept 1." The writer stated that she can hear these disturbances through her bathroom window as it on the same side as the tenant's balcony, but she does not provide the number of disturbances, the specific times or what the disturbances were.

K302 wrote that she is now hearing excessive noise 6 times per week and identifies the disturbances as running through the hallway, yelling at her kids while in the hallway, and more yelling at her kids once they are in their own rental unit. The writer goes on to say: "This is not "playtime, jovial" outbursts, but angry screaming and crying lasting 10 – 20 mins at times. This past weekend I heard 5- 8 outbursts, both in the hall and inside the suite."

On September 16, 2021 K206 wrote that she still hears "the three girls, crying at night around 7 p.m. Its more like at hurt crying with fear". She goes on to state that the tenant seems "more loud" since the initial complaint but no specific dates are provided. She did provide the following description specific to the date of the letter:

"Today I witnessed the older mother like figure yelling at the youngest in front of our building, as I was going to my car. The little one was crying extremely loud as they walked north towards 112 ave at 2:00p.m. I pulled my car up towards them and asked if everything was ok? She ignored me and was telling the youngest child to behave and to react normal. I acknowledge to her that ignoring

me was disrespectful and that I will be contacting the Department of Child Services and then drove away. I immediately went to Mainstreet office to complain but at this time no one was in the office, I will be calling Child Services, Monday Sept 20/2021 for this has gone on too long.”

In their December 9, 2021 letter K206 wrote: “on December 6-7, 2021, there has been crying and screaming which I hear in my apartment and balcony. I heard the noise between 9:30 am until 7:00 pm. It was constant for 2 days.”

On December 7, 2021 K102 wrote: “Here we go again or still. Being woken up three to four times a night, night after night. No specific dates were identified.

In their letter dated December 5, 2021 to the landlord K302 wrote that the last week had been particularly troubling and that there was “continual yelling/noisy/arguing/screeching/screaming fight going on”. The writer went on to say that this happens almost every day after school. The writer also stated:

“These are not “normal/happy” family noises I am being subjected to. For instance my downstairs neighbours have 2 very young children. From them, I hear them singing, playing, laughing. All signs of a health family, and I have no trouble with those types of normal noises. From the neighbor I am complaining about, the running in hallway is because the mother is behind them, already arguing or yelling before they even reach their door. Bottom line: I don’t enjoy living here anymore with this particular neighbor.

During the hearing the landlord’s agent testified that she had on one occasion, while on site, heard loud disturbances coming from the rental unit. However, the agent gave no indication that she had addressed this incident with the tenant.

The tenant submitted that the particular occupants of the residential property who have lodged these complaints have done so in order to support the occupant of K204 who introduced herself to the tenant’s family when she came up to the tenant’s unit the day they were moving in to complain about the noise the movers were making.

The tenant also submitted that the occupant of K204 puts her grandson to bed at 7:00 p.m. and as such she demands absolute silence after 7:00 p.m. despite the tenancy agreement stipulation in clause 20 that states quiet time is between 10:00 p.m. and 9:00 a.m.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reason, one or more of the following applies:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- The tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Policy Guideline #8 stipulates that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing that:

- There is a problem;
- They believe the problem is a breach of a material term of the tenancy agreement;
- The problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- If the problem is not fixed by the deadline, the party will end the tenancy.

I note that in the letter dated June 25, 2021 the landlord does reference Clause 18 – which they say states:

“18. In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the tenants and guests shall not disturb, harass or annoy occupants of the building or neighbors and shall not cause loud conversation, music, television, or other irritating noise to disturb the peaceful enjoyment at any time, and shall maintain quiet between 10 pm and 9 am.”

However, I note that clause 18 in the tenancy agreement submitted by the landlord that governs this tenancy is entitled “Use of Premises” and it describes the tenant’s obligations to maintain reasonable health and cleanliness. I also note clause 20 is entitled “Conduct” and begins:” In order to promote the convenience, safety welfare and comfort of other....”

Furthermore, the landlord did not identify in the One Month Notice to End Tenancy for Cause issued on August 13, 2021 which material term the tenant had allegedly breached.

As such, I find it is unclear which “material” term the landlord suggests the tenant has breached.

In addition, the requirements set forth in Policy Guideline 8 require the landlord, if they intend to end the tenancy for breach of a material term, to identify that they believe the term is material, which they did not in the letter of June 25, 2021. The landlord was also required to provide a specific date for the tenant to correct the breach, which they did not in the letter of June 25, 2021.

For these reasons, I find the landlord has failed to establish the tenancy should end for the breach of a material term.

I am also not satisfied the landlord has established that the tenant or a guest permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I make this determination for the following reasons:

1. The complaints of the individual complainants are vague and devoid of details. In addition, they often contradict each other. For example, K102 complains of being woken up over night by disturbances every hour from 11:00 p.m. onward; K204 states that the disturbances start at 7:00 a.m. and go until 10:00 or 11:00 p.m.; K206 states that the disturbances occur between 8:00 and 8:30 a.m. and between 7:00 and 9:00 p.m. daily; and K302 says there is sporadic noise about twice weekly. It is unclear based on these complaints, if these occurrences are sporadic and/or constant and ongoing 24 hours per day.
2. While I accept noise from a rental unit may be heard in a hallway or another rental unit adjacent, above, or below the subject rental unit, I am not satisfied that a tenant living 2 floors away and not directly below or above the subject rental unit would be disturbed so significantly that they would lose sleep or have any disturbance at all without all of the other occupants, in between, being similarly affected, or at least somewhat affected.
3. Of the 16 individual surveys the landlord sent out only the people that complained originally (with one exception) submitted they were disturbed by this tenant. So out of 16 tenancies only 4 were allegedly disturbed. The one exception is in a neighbouring unit and her original complaint was that the disturbances were sporadic. In addition, her complaints are that the noises created by this tenant are not “normal/happy” family noises...she compares this to the noises made by another family living in the residential property which are “all signs of a healthy family”. This complainant suggests that the noises from the subject tenant are significantly disturbing sufficient to end a tenancy because she believes this is not a “healthy family” but she will tolerate the noises of a “healthy family”.
4. Each of the complainants suggest that these issues have been going on ever since the tenant moved into the property in March 2021, however not one complaint is recorded with the landlord until June 24, 2021 and it appears that with the exception of one complaint letter (December 12, 2021) not one person reported any disturbances, especially in the middle of the night, to police or local bylaw enforcement.
5. Finally, in many of the complaints, and in fact, in the landlord’s “survey” there are references to the safety and security of the tenant’s children, including threats to call the Ministry of Children and Family Development. Yet not one single person has reported any concerns to the MCFD.

On this last point, as an example, in K 206's September 16, 2021 letter, she states that she tried to intercede in an event on the street where the tenant was yelling at her youngest child who was crying and that she informed the tenant she was going to call "Child Services", and yet she drove away and "immediately went to Mainstreet office to complain" but no one was in the office.

It is not clear to me why K206 would have wanted to make any complaint to the landlord about this incident for a number of reasons, other than to exaggerate the seriousness of her complaints. First it was an incident on the street where the landlord has no authority; second it is not clear what the complaint would be – was it that the tenant ignored her or that she felt the tenant had done something to the child that warranted a complaint to MCFD and yet no complaint was ever lodged or followed up on by MCFD.

As such, I find the landlord has failed to establish they have cause to end this tenancy under Section 47 of the *Act*.

While the tenant also sought an order to have the landlord comply with the *Act*, regulation or tenancy agreement as it relates to dealing with complaint investigations, I have no authority to make such an order as the *Act* and regulations do not stipulate how complaint investigations should proceed.

However, I would encourage the landlord to fully investigate complaints, including having a discussion with the tenant, prior to issuing warning letters and/or notices to end tenancy for cause. I also caution the landlord that by sending a survey to other occupants of the residential property with allegations, especially unconfirmed or unproven significant allegations, such as a tenant is "hitting the kids" may be inappropriate.

Conclusion

Based on the above, I order the One Month Notice to End Tenancy for Cause issued by the landlord on August 13, 2021 is cancelled and 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: December 30, 2021

Residential Tenancy Branch