



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on September 21, 2021 and adjourned to January 20, 2022. This decision should be read in conjunction with the interim decision arising out of the September 21, 2021 hearing.

Tenant AM (the tenant) and Landlord JM (the landlord) attended the January 20, 2021 hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service of the evidence was confirmed. The parties each confirmed receipt of the evidence. Based on the testimonies I find that each party was served with the respective evidence in accordance with sections 88 and 89 of the Act.

I note that section 55(1) of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is

dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on July 15, 2020. Currently, monthly rent is \$1,600.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$800.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It states:

12. All noise will be kept to a minimum, particularly between the hours of 11:00 pm and 7:00 am. Loud parties and disturbances will not be tolerated and will result in immediate eviction and possible legal proceedings against the tenant.

Both parties agreed the landlord served the Notice and the tenant received it on May 13, 2021.

The Notice was submitted into evidence. The Notice is dated May 13, 2021 and the effective date is June 30, 2021. Both parties agreed the Notice served was signed by the landlord. The tenant submitted the application on May 14, 2021 and continues to occupy the rental unit.

The reason to end the tenancy is: the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of the cause are:

Tenant was in breach of the agreement amendment clause #12. "All noise will be kept to a minimum, particularly between the hours of 11:00 pm and 7:00 am. Loud parties and disturbances will not be tolerated and will result in immediate eviction and possible legal proceedings against the tenant"

Tenant was also verbally abusive towards another tenant on the property when complaints were made.

The landlord affirmed the rental unit is the lower level and there is another rental unit upstairs. The landlord stated tenant RB lives in the rental unit above the tenant's unit, and complained about loud noise on April 14, 2021:

I first started having noise problems with [tenant] in the late summer of 2020. Every 3-6 weeks he would play very loud music for several hours during the day. I hadn't installed a decibel meter on my phone yet but it was loud enough that I could feel the music through my feet and chair even if I had headphones on. **The first few times I said nothing, but in late October when he turned his music on loudly I went downstairs and knocked on his door to ask him to turn it down. [the tenant] told me he didn't have to turn it down, he can have his music as loud as he wants during the day, and that I should just get over it and not let it control me.** After this, I would regularly hear his TV/video game noise in my room. **I installed a decibel meter app on my phone which put the volume of his media in my room at around 55db. I started using white noise to mask his noise and it worked fairly well for a few months so I wouldn't have to listen to his noise. Several times before March I texted him to turn his TV down if it was late (around 11) and he would comply. However, starting in March he started to get even louder with his TV volume, usually 55-70db in my room, about 50-60db in my living room, which was too loud to mask using white noise.** On March 12th I texted him and asked him to turn it down but he ignored my text. **On March 13th around 2pm I texted him and asked if he could turn down his music, as it was loud in my living room. A few minutes later he phoned and told me to "stop being so fucking bossy," that I should just get over it and that he wasn't being loud at all but he could be if he wanted, which I took as a threat that he would turn it up if I didn't stop asking him to be quieter. He started yelling and swearing and I could hear him through the phone as well as through the floor.** It was after this conversation that I didn't know what else I could do to resolve our dispute so I contacted our landlord [redacted for privacy] and explained the situation. Over the next few days when [tenant] was loud [landlord] would ask me to text [tenant] and ask him to turn it down. Twice he ignored me and one time he just replied "I'm watching my movie".

(emphasis added)

The tenant testified that on March 13, 2021 he was listening to music and cleaning the suite around 12:30 P.M, RB asked him to reduce the volume of the music, but he did not reduce the volume because it was not loud. The tenant said he was not abusive with RB. Later the tenant affirmed he told RB: "You are fucking crazy".

The tenant stated that later in March 2021 he was watching television and RB complained to the landlord about the volume. The landlord immediately came to the rental unit and concluded that the volume was not loud.

The tenant's written submission dated May 10, 2021 states:

According to [tenant RB], my noise levels have been extremely loud during the day around 10am to 2pm. He told me his DB meter was at 55. Upon a little bit of research I saw that 55db is acceptable during the day in a residence so I continued on. They were still very demanding about it even when I would comply later in the nights. I rarely play music loudly and I watch tv everyday. They harassed me constantly for legal noise levels that they measured from their phone and not a regulation sound meter.

The landlord testified that a second tenant that also lives upstairs also complained about noise originating from the tenant's rental unit.

The landlord said he believes the noise is emanating from the tenant's television or stereo, it happens during the daytime and occasionally after 10:00 P.M. The landlord does not live in the rental building.

The tenant affirmed his noise level is reasonable and on only one or two occasions the volume of his television was loud after 10:00 P.M. The tenant reduced the volume when tenant RB asked him to do so after 10:00 P.M.

The tenant stated that RB and his roommate listen to loud television and play the guitar after 11:00 P.M. and he does not complain about their noise levels.

The landlord testified he verbally warned the tenant several times after he received the April 14, 2021 complaint.

The landlord said the tenant shares the rental unit with tenant LG and submitted a letter from LG:

I, LG, share an apartment at [tenant address] with [the tenant]. I was present in the apartment when our landlord attended to speak with [the tenant] regarding complaints from the upstairs neighbours.

[the tenant] acknowledged that he did listen to music but stressed that it was during day hours and therefore did not accept that the level of noise should be an issue for the neighbours as they are young guys.

It was apparent to me that [landlord and tenant] were not going to come to an understanding regarding the level of sound during day hours.

It should be mentioned that while [the tenant] has not agreed with the complaints he has kept the music quite low since receiving the eviction notice.

(emphasis added)

The landlord affirmed that the tenant reduced the level of noise because the Notice was served.

The landlord submitted into evidence text messages dated August and November 2021.

Analysis

I accept the undisputed testimony that the landlord served the Notice and the tenant received it on May 13, 2021. I find the tenant's application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

I note I can only consider facts that happened until the day the Notice was served.

Section 47(1)(d) of the Act states:

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,

In the case before me, both parties have provided conflicting testimony regarding hostile verbal and written exchanges between the tenant and tenant RB and noise complaints.

Based on the tenant's testimony and the letter from tenant RB, I find the tenant was abusive and disturbed tenant RB on March 13, 2021. I find that the tenant's action on March 13, 2021 is not appropriate, but it is not serious enough to terminate the tenancy.

I find the tenant's testimony about noise levels was more convincing than the landlord's testimony. I note that tenant LG, who also resides in the same unit, stated that the loud music was played during the daytime and she did not complain about the tenant's noise. I find the noise complaints against the tenant are about reasonable noise.

Some noise is unavoidable in a multi-unit dwelling. In this matter, I find that the landlord has not provided satisfactory evidence to establish that the noise disturbance caused by the tenant is unreasonable.

Based on the letters from tenants RB and LG and the testimony offered by both parties, I find the landlord failed to prove, on a balance of probabilities, the tenant is significantly interfering or disturbing the landlord and other tenants. The landlord failed to prove the tenant's actions.

As such, I find the landlord failed to prove, on a balance of probabilities, the grounds of the Notice. Accordingly, the Notice is cancelled and of no force or effect.

I warn the tenant that he may be served a new one month notice to end tenancy if he is hostile or abusive again.

I authorize the tenant to recover the filing fee, as the tenant was successful.

Conclusion

The Notice dated May 13, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

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: January 21, 2022

Residential Tenancy Branch