



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 a tenancy. The Tenants applied for:

- an order cancelling a One Month Notice to End Tenancy for Cause, dated November 3, 2021; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the Landlord in person on November 16, 2021, which the Landlord confirmed. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified he served the responsive evidence on the Tenants in person on January 24, 2022, which the Tenant confirmed. I find the Landlord served the Tenants in accordance with section 89 of the Act.

Issues to be Decided

- 1) Are the Tenants entitled to an order to cancel the One Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on June 1, 2013, with a previous owner; rent is \$826.00, due on the first of the month; and the Tenants paid a security deposit of \$350.00 and a pet deposit of \$50.00, which the Landlord still holds.

The Landlord testified he served the One Month Notice on the Tenants in person on November 3, 2021, which the Tenant confirmed. A copy of the One Month Notice was submitted as evidence. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates the tenancy is ending because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Details of Causes section of the One Month Notice includes references to:

- the Tenant complaining repeatedly about an upstairs neighbour walking around in their apartment all night;
- the upstairs tenant complaining that the Tenant was yelling in the hall about them; and
- the situation is affecting other tenants and the Landlord.

The Landlord testified that they began getting complaints from the Tenant after new tenants moved into the unit above them. The Tenant would complain to the Landlord's agent, KO, by text. The Landlord testified that he or KO investigated each of the Tenant's complaints, and talked to the upstairs tenants about the Tenant's noise concerns.

The Tenant testified that the upstairs tenant walked back and forth all night, disturbing the Tenants below. The Tenant submitted that the noise would typically begin at 10:00 p.m.

The Landlord submitted as evidence texts between KO and the upstairs tenant. A September 3, 2021 text from the upstairs tenant states: "We had that guy from below us come up and get all mad told us we weren't aloud [sic] to walk around in our place after 10 we weren't being loud or anything."

The Tenant testified that on September 13, 2021 at approximately 11:30 p.m., they were disturbed by the sound of the upstairs tenant "screaming at her husband."

The Tenant submitted as evidence a copy of a September 15, 2021 text to KO, in which the Tenant writes: “Talked to [a neighbour on same floor] they were also awake on and off from 4.30 am thanks to the neighbor.”

The Landlord testified that when he asked the other neighbour, who lives on the same floor as the Tenant, if they had any noise issues with the tenants upstairs, the other neighbour said he had “no complaints to speak of.”

The second Tenant, who did not attend the hearing, provided the following written submission, dated October, 2021:

Since September 2021 there have been irregularities in the apartment on the top floor where residents have not respected the law of silence, which starts to apply from 10 pm onwards. Every night we are woken up by our upstairs neighbors who walk around the apartment throughout the night not having the slightest caution, walking as if they were stepping on concrete thus causing an unbearable noise since the building is very old and has no good sound insulation. This behavior lasts all night, as it starts between 10:30 or 11 at night and goes on until approximately 5 in the morning, bothering us and waking us up.

The Tenant testified that his wife wakes easily. He also submitted that “we are lucky we live in a small town – no noise.”

The Tenant testified they were disturbed during the night on October 3, 2021, by the upstairs tenant repeatedly stepping on a creaky spot in the floor.

An October 3, 2021 text from the Tenant to KO, submitted as evidence, states: “Lucky for us woke up at 5 then 7 yes upstairs again.” KO replies, stating that she will speak with the new tenants again and give them a warning letter. The Tenant testified they had been disturbed by the tenant walking and talking at 5:00 a.m. and 7:00 a.m.

The Tenant testified they were also disturbed at night by yelling from the upstairs tenant on October 4, 2021.

On October 5, 2021, in a text submitted as evidence, the upstairs tenant texted KO stating: “The guy downstairs is yelling around again right now ... any luck on a different place for my family and I to move into?” In an October 7, 2021 text, the upstairs tenant

asked KO again about moving to another unit, stating: "We were super quiet in are [sic] place idk what he's complainant about."

In an October 13, 2021 text to KO, submitted as evidence, the Tenant acknowledges that it is daytime, but complains that he can hear a dog running around upstairs.

The Tenant testified that on October 14, 2021 at 3:45 a.m. they were disturbed by the tenant upstairs "screaming at her husband."

The Landlord submitted as evidence a copy of a letter to the Tenant, dated October 20, 2021, in which the Landlord states the Tenant has "continued to pressure" KO to address the situation, though she had directed the Tenant to discuss his ongoing noise concerns with the Landlord's agent DH. The letter states that follow up on each of the Tenant's noise complaints about the upstairs tenants has resulted in finding they were not being unreasonably noisy. The letter suggests that perhaps the Tenant grew accustomed to the previous "complete absence of activity above you for quite some time," and notes that the building is an older structure and is not completely soundproof. The letter notes that the Tenant refused the offer to relocate to an upper floor suite.

The Landlord testified that as a result of the frequency and "intensity" of the Tenant's complaints, KO has taken stress leave and sought medical treatment.

A November 1, 2021 text to KO from the upstairs tenant, submitted as evidence, states: "We have decided just to find a different place we can't handle trying to be so quiet and still hear that guy downstairs yelling around about us ... we would be happy to come back to a different building."

The Landlord also submitted as evidence a letter written by the upstairs tenant. The undated letter is stamped received on November 22, 2021. The upstairs tenant wrote they "have had to find another place to live and move out so quickly." The tenant wrote: "We left due to feeling threatened and not safe from our neighbour [sic] down below us, we lived in [unit number] for two months afraid to walk around in our own home."

The Tenant testified that they have been living there for eight years, and this was the first time they had a problem with noise. The Tenant testified that the tenants they had an issue with moved out in November 2021, and two new tenants moved in, who the Tenant has not heard at all.

The Landlord testified that they oversee other buildings as well, and find that typically multiple units will be affected by a noise disturbance, however, they had not received any other noise complaints about the former upstairs tenants—just those from the applicant Tenant.

The Landlord testified that the former upstairs tenants have moved back into the complex, into a different building. The Landlord testified they have received no noise complaints from those tenants' new neighbours.

Analysis

Based on the parties' testimony, I find the Landlord served the Tenants the One Month Notice in person on November 3, 2021, in accordance with section 88 of the Act.

I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Tenants received the Notice on November 3, 2021 and applied to dispute the Notice on November 11, 2021, I find the Tenants met the 10-day deadline.

Section 47 of the Act states that a landlord may end a tenancy if a tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I accept the affirmed, undisputed testimony of the Landlord that the Tenant has repeatedly complained about their upstairs neighbour, and that the primary complaint is that the upstairs tenant was walking around their own apartment at night.

I accept the Landlord's affirmed testimony that when they investigated each of the Tenant's complaints, they found that the upstairs tenants were not making excessive noise.

I accept the submissions of both parties that the building is an older one, and does not have good soundproofing.

I accept the Landlord's affirmed testimony and submitted evidence that the Tenant refused to move to an alternate suite on a higher floor, and that the Tenant yelled at the upstairs tenants and made them feel unsafe.

I accept the Landlord's affirmed testimony and documentary evidence that the Tenant's repeated behaviour has caused the upstairs tenants to move out, and the Landlord's agent to take stress leave and seek medical attention.

I also accept the Landlord's affirmed testimony that they had received no noise complaints about the upstairs tenants from other tenants in the building, that the former upstairs tenants have moved into another building in the same complex, and that the Landlord has received no new noise complaints regarding them.

Based on the evidence before me, I find, on a balance of probabilities, that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Therefore, I find the Landlord is entitled to an order of possession.

As the Tenants are unsuccessful in their application, I decline to award them the filing fee.

Conclusion

The Tenants' application is dismissed. The One Month Notice is upheld.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants.

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: February 09, 2022

Residential Tenancy Branch