



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on April 12, 2022. The Tenant applied for the following ground:

- I want the landlord to comply with the Act, regulation and/or the tenancy agreement

As part of her application, the Tenant noted that she wishes to dispute the 1 Month Notice to End Tenancy for Cause, issued to her on January 11, 2022. However, as stated in the hearing, the Tenant selected the wrong ground on her application. Both parties agreed to allow the Tenant to amend her application to include the following ground as part of this proceeding:

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

Both parties were prepared and willing to proceed with the hearing on this issue. I hereby amend the Tenant's application, by mutual consent, to remove the Tenant's initial ground, and add in the second ground, relating to the cancellation of the Notice.

Both parties were present at the hearing and provided affirmed testimony. The Landlord had a witness attend the hearing, I.G. The Tenant was at the hearing by herself. Both parties confirmed receipt of each other's documentary evidence and no issues were raised with respect to service of the documents or evidence. The Tenant confirmed she was able to open the files on the Landlord's USB drive.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The landlord issued the Notice for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of 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.

Under the “Details of Cause” section, the landlord specified that the Tenants have been causing a disturbance after 11:00 pm, and sometimes until 4:30 am. The Landlord noted stomping, banging, dragging, doors slamming, floor noises, voices, laughing, music. The Landlord noted that they have issued several warning letters in the past, with the last one in May 2021, but the same noises keep occurring.

During the hearing, the Landlord explained that this rental building consists of a 76 units, with a wood framed construction. The Tenants have lived in the rental unit since 2016. The Landlord explained that the Tenants rent a 3-bedroom unit, and the Tenant who lives below, I.G., has been repeatedly disturbed by noise coming from this rental unit over the past few years. The Landlord stated that the issue has not improved.

The Landlord pointed to a written warning about noise, issue on October 13, 2018. The Landlord explained that I.G. reported “excessive” noise after 10 pm on October 12, 2018. The Landlord provided a copy of the second written warning issued to the

Tenants on May 7, 2021, where there were complaints (from I.G. in the unit below) that there was loud music and yelling coming from the apartment on May 6, 2021, until 4:30 am. The Landlord pointed to a security report from May 6, 2021, confirming there were loud voices at around midnight. The Landlord also pointed to an email from I.G. on January 1, 2022, stating that the Tenants of the subject rental unit have been noisy for the past few months, until late at night. I.G. complains about banging, floor reverberations, laughing, singing, and ongoing noise.

The Landlord also pointed to a security report from January 9, 2022, where they investigated another complaint from I.G. at around 10:53 pm. The security report confirms that they attended the unit and observed loud talking, but no music.

The Landlord noted that after this evening, they chose to issue the Notice. Following the issuance of the Notice, the noise disturbances have continued, and the Landlord provided recordings of floor noises, recorded by I.G. in her unit below from later in January. I.G. attended the hearing and reiterated that she has been disturbed by the noises from above for years now. Although I.G. spoke to a few dates and times where the Tenants were loud, since the Notice was issued, she did not have any recollection or record of dates, times, or specifics regarding the incidents leading up to the Notice.

The Tenant stated that she had conversations with the previous building manager about floor noise many years ago. The Tenant stated that there are floor and building noises that can be heard by simply walking down the creaky wood framed floors. The Tenant stated that she brought this up to the previous manager, and nothing could be done about the floor creaks, and popping noises, as it is a byproduct of the older, wood floors. The Tenant stated that to try and muffle the noises, she bought some area rugs. The Tenant stated that she hears loud noises coming from the floors and the walls as well, and she denies that it is her fault, or that her son/daughter are being irresponsible or inconsiderate. The Tenant stated that the main source of the noise is from the old wooden flooring as it shifts and pops when it is being walked on.

The Tenant stated that she feels she should not be punished for simply walking around, and any noise from doing so is not her fault, as it is the way this building is constructed. The Tenant stated she is home almost every night, and there are no parties, or loud music, and the only exception to this was when she went away last May, and her son had a social gathering.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on January 11, 2022.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. However, it appears that much of the Landlord's testimony and evidence presented at the hearing relates to the Tenant's alleged noise disturbances. Further, under the details of cause section of the Notice, it only identifies the noise issue. As such, I find this is the issue I will focus on, and whether or not it has been sufficiently demonstrated that this issue gives the Landlord sufficient cause to end the tenancy under any of the grounds selected on the Notice.

I have reviewed the testimony and evidence on this matter. I note the Landlord issued this Notice based upon the noise complaints they have received and noted over the past couple of years. I also note the noise complaints appear to be originating from one person, I.G., who lives below the subject rental unit. There is no evidence to demonstrate the complaints are coming from any other Tenants. During the hearing, I explained to the Landlord that I was mainly concerned with the noise issues that led to the issuance of the Notice, as opposed to what has occurred since. I.G. was also reminded to focus on the issues and incidents leading up to the issuance of the Notice on January 11, 2022.

I note the Landlord gave at least one written warning, one in 2018, and another in May of 2021, when the Tenant's son was having friends over while she was out of town. The Tenant acknowledged that she was out of town this day, but denied that this is an ongoing issue. I note the Tenant below again complained to the Landlord, via email, in January of 2022, and that the Landlord issued the Notice shortly thereafter.

I.G. was present at the hearing as a witness for the Landlord regarding the allegations of noise. However, she had little to no specific recollection or record of what occurred, and when, leading up to the Notice (prior to January 11, 2022). I.G. appears to have only kept records after the Notice was issued. As stated in the hearing, I would be focusing on issues that led to the issuance of the Notice, as opposed to what has occurred since, in order to determine whether or not the Landlord has sufficient cause to

end the tenancy by way of the January 11, 2022, Notice. The Landlord's witness provided no clarity on what the issues were, specifically, and she was only able to generally speak to the fact that the Tenants have been living above her for several years, and noise has always been an issue.

I note the Landlord provided a couple of recordings into evidence. Although there is the occasional bang or thud noise, I find the vast majority of the noise in these recordings appears to be from the creaking floor boards. When considering the age, character, and construction of the building, I do not find the Tenants should be penalized for the noises emanating from the floors, as it is something they have limited control over. I am not satisfied the floor noises are deliberate, or unreasonable, given the age and character of the building. I am also not satisfied these noises are such that they represent a breach of a material term of the tenancy agreement.

Overall, I find there is little evidence to support the allegations of unreasonable noise, yelling, stomping, banging, and door slamming. I note I.G. appears to be the sole complainant, as she lives below. I found her recollection of events lacked clarity and detail regarding the noise issues. I did not find I.G.'s testimony on the allegations of noise were sufficiently compelling. I note the Tenant denied that there is ongoing partying or excessive noise, as alleged, and she asserts it is largely due to the construction of the building.

Ultimately, the burden of proof is on the Landlord to demonstrate that there is a sufficient basis for the Notice/ I find the Landlord's evidence limited documentary evidence, and vague witness testimony is insufficient.

I find that the Landlord has not provided sufficient evidence to support any of the grounds on the Notice, based on the noise issue; therefore, the Tenant's application is successful and the Notice received by the Tenant is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with her application, I grant the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: April 13, 2022

Residential Tenancy Branch