



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPC FFL
For the tenants: CNC FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both the landlord and the tenant seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession for cause, and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notice to End Tenancy for Cause dated May 31, 2022 (1 Month Notice), and to recover the cost of the filing fee.

The tenant, two support persons for the tenant, AA and SK (supports) and the owner of the corporate landlord company (landlord) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were affirmed. Testimony was provided and both parties had the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

There is no dispute that the tenant did not serve documentary evidence on the landlord. The tenant confirmed that they were served with the landlord's documentary evidence and that they had the opportunity to review that evidence. Given the above, I find there are no service issues to be addressed further.

Preliminary and Procedural Matters

During the hearing, the parties confirmed that a written tenancy agreement was not created. I will address this issue later in the analysis as part of this Decision.

Pursuant to section 64(3)(c) of the Act, the name of landlord AF was replaced with the corporate landlord's name, APDI. This amendment was made based on the testimony from AF which indicated they were sure that all payments are made to APDI and not AF personally. As the tenant was unsure whether AF stated that APDI was the landlord at the start of the tenancy, I prefer AF's testimony as AF was sure.

Both parties confirmed their email addresses. Both parties were also advised that the Decision will be emailed to the parties.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If no, is the landlord entitled to an order of possession?
- If yes, should the tenancy continue until ended in accordance with the Act?
- Is either party entitled to recover of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that on October 1, 2019 a verbal tenancy agreement was formed. Monthly rent is \$1,000 per month and is due on the first day of each month. The tenant paid the landlord a security deposit of \$500.

The tenant confirmed receiving the 1 Month Notice on May 31, 2022. The effective vacancy date is listed as July 1, 2022, which has passed. The tenant disputed the 1 Month Notice on June 23, 2022, which is within the permitted 10-day timeline under section 47 of the Act.

The landlord listed the following reason on the 1 Month Notice:

☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):

- ☒ 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.
- ☐ put the landlord's property at significant risk

The landlord also wrote in the Details of Dispute section of the 1 Month Notice the following:

Details of the Event(s):

Between Sunday May 8 to Saturday May 14, there were 4 days/episodes of significant screaming, slamming of objects, noises of things being hit or thrown. There is significant disruption and unreasonable disturbance for all others in the building (2 units). Tenant was provided notice via text message 15 May 2022 to end tenancy for 1 July 2022. ^{Prolonged - at all hours}

Summary of landlord's evidence

The landlord described the rental unit as being one of the upper units in a multi-level building, with unit A (Rental Unit) and unit B being on the upper floor and Unit C on the lower floor.

The landlord described the rental building as having “soundproofing the same as hotels”, which includes:

- Double drywall
- Resbar
- Greenglue
- Air spaces
- Multiples walls
- 5mm vinyl plank flooring with acoustic absorbing backing
- Double layer plywood subfloor (glued and screwed)
- Layer of concrete before vinyl flooring installed.

The landlord stated that there were no sound issues until the tenant moved into their rental unit. The tenant has two children ages 7 and 10. The landlord stated that there has been noise and disturbances, which were dealt with via texts and in-person conversations.

The landlord presented a letter from CS of unit C providing examples of noise/disturbance; however, CS neglected to include specific dates for my consideration.

The landlord then presented a text from Sunday, May 15, which is included below:

Sun, May 15, 3:03 PM

Hi Annie. We are having a lot of difficulties with the screaming and loud noises of things slamming and being hit or thrown. It's affecting our sleep, my work and my stress and anxiety levels. This week alone from Sunday to last night there was 4 episodes that really affected us. I was hoping it was a phase the kids would grow out of but instead it seems like it's getting to be more violent as now it's not just screaming but all the slamming and loud noises of other things being damaged. I am finding that I am building resentment every time it happens and I don't want that. I don't want our friendship to be damaged. I need you guys to find another place by July 1st.

The landlord stated that they consider the tenant a friend and that there have been mainly verbal discussions between the parties regarding noise/disturbances. The landlord also provided a text from June 2020, which reads as follows with the left-side portion being the tenant and the right-side portion being the landlord:

Wherever he is he has no service right now to watch the video we sent. That's what he said in his response.
Ok thank you.

Jun 22, 2020, 1:15 PM

Is soha over there playing?

Yes. Is she supposed to be?

Yeah. She said she was going to see if she could.

Can you pull the car off the street please. The street sweeper is out today.

Ok and done

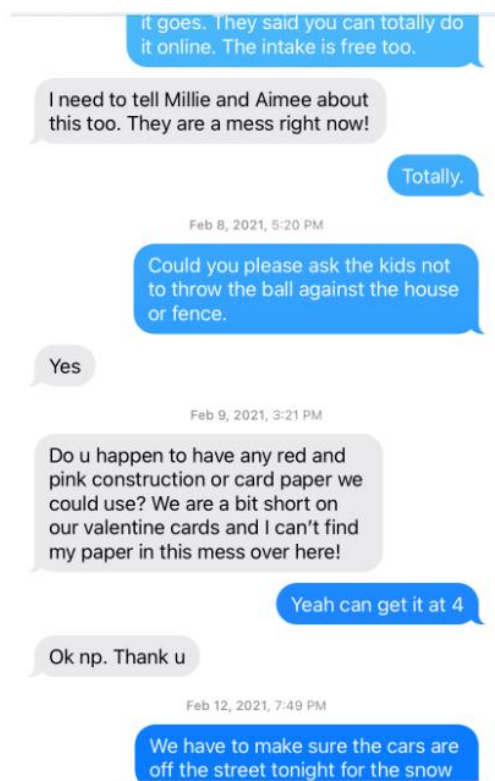
Sorry I was on the phone

No problem

Can you take the ball away please. It's hard to work with the thumping

The landlord admitted during the hearing that the first incident was in January (January Incident) but confirmed they did not provide evidence related to the January Incident.

The landlord then presented a text message of a February 8, 2021 text message exchange in the same format as above:



The landlord described noise between May 8-14, 2022 to which the tenant's response is listed below. The landlord confirmed that they did not make any recordings of the noise for consideration.

Tenant's response to landlord's evidence and tenant's evidence

The tenant confirmed there was noise between May 8-14, 2022 but denies that was as severe as the landlord made the noise out to be.

The tenant confirmed that there has been no written warnings or notices and that the texts are what the landlord sent to the tenant as indicated above in the landlord's evidence. The tenant stated that they thought the texts were just conversational as friends versus a formal warning that they could be evicted if noise continued.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, the landlord confirmed they did not make any recordings of noise. As such, I am unable to determine whether the noise was consistent with the landlord's testimony versus the tenant's testimony. The landlord has the onus of proof so I find the lack of any recordings to negatively impact the landlord's ability to prove that the 1 Month Notice is valid.

Secondly, the landlord failed to provide any formal written warnings to the tenant to indicate that further noises or disturbances could lead to a Notice to End Tenancy. I agree with the tenant that the text conversations appear to be conversational in nature and do not support that the landlord will be issuing a Notice to End Tenancy if the noise/disturbance continues. I find this is likely to the landlord and tenants being "friends" as described by the landlord. A written warning to the tenant is much clearer to the tenant than a text that provides no specific dates.

In addition, I afford little weight to the complaint letter from CS of Unit C as CS fails to provide any specific dates to which the tenant could prepare a defence of any allegations. Given the above, I find that the landlord has provided insufficient evidence to support the only reason listed on the 1 Month Notice.

As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated May 31, 2022.

I ORDER the tenancy to continue until ended in accordance with the Act pursuant to section 62(3) of the Act.

As the landlord's application has failed, I do not grant the landlord the recovery of their filing fee.

The tenant's application is successful. Accordingly, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the Act, in the amount of \$100 to recover the cost of \$100 filing fee. **I authorize** a one-time rent reduction in the amount of **\$100** from a future month's rent, in full satisfaction of the tenant's recovery of the cost of the filing fee pursuant to section 62(3) of the Act.

In addition, some noise will always be expected in multi-unit building. However, the **tenant is cautioned** that this Decision represents a **formal caution to the tenant that any future excessive noise/disturbance that creates significant interference or unreasonable disturbance may result in a new 1 Month Notice being issued**. As such, the tenant is encouraged to ensure that any noise or disturbance from their unit is not causing significant interference or unreasonable disturbance to the landlord or other tenants in the building.

Conclusion

The landlord's application fails in its entirety. The tenant's application is successful.

The 1 Month Notice is cancelled. The tenancy shall continue until ended in accordance with the Act. The tenant is granted a one-time rent reduction of \$100 as indicated above for the filing fee.

The tenant has been cautioned as noted above.

This Decision will be emailed to both parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2022

Residential Tenancy Branch