



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants attended the hearing. They were represented by an Advocate. The landlord attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlords testified, and the tenant confirmed, that the landlords served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

I note s. 55 of the Act requires that when a tenant applies 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, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

At the outset, I advised the parties of rule 6.11 of the Residential Tenancy Branch (the "**RTB**") Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing. I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue

At 11:31 a.m., part way through the conference call, all participants were disconnected and had to re-dial into the hearing. The hearing resumed at 11:35 a.m. Approximately 12 minutes later,

the conference call announced that one of the parties had left the conference; however, the party confirmed he was still dialed into the conference and online.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If the tenants fail in their application, is the landlord entitled to:

- 1) an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting September 1, 2020. Monthly rent is \$1200.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$600.00. The landlord still retain this deposit. I note an incomplete Tenancy Agreement was uploaded to the RTB. Page 6 of the tenancy agreement indicates there is an addendum attached to the agreement, but the addendum was not provided either by the tenants or landlord.

On May 21, 2022, the landlord served the tenant with a One Month Notice to End Tenancy for Cause, listing an effective date of June 30, 2022. A copy of the Notice was attached to the tenant's door. The grounds to end tenancy were:

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.

The Notice provided additional details of the causes leading to its issuance:

During latest 6-12 months, 4-5 neighbors of (address) complained 3-4 times each for the loud music played throughout the whole night from (suite #). Landlord

passed the complaints and gave warnings to the tenants of (suite #), but never improved.

The landlord testified that the tenants, prior to occupying the second-floor rental unit, occupied a corner rental unit one floor above. While there were some issues when the tenants occupied the upper unit, the tenancy became a significant problem when the tenants moved into the second-floor rental unit. The suite is centrally location on the second floor with neighbors on either side of the rental unit, across the hall as well as above and below.

The landlord stated that he repeatedly verbally warned the tenants each time the landlord received a complaint about loud music. The tenants would comply, reduce the volume of the music or be quiet but then shortly thereafter the issue would recur. The landlord received multiple complaints, at all hours of the night, from occupants about the loud music keeping them up throughout the night and into the early morning.

The landlord states that while he likes the tenants and would like them to remain tenants, he has lost trust in their broken commitments. The tenants have lost credibility after repeatedly making and breaking promises. The landlord testified that his credibility is now in question, and he can no longer placate the other occupants with promises he knows the tenants will break. Some of the occupants are threatening to move because of the repeated disturbances.

The landlord provided a series of signed, typewritten letters from occupants documenting complaints reproduced, in part, below.

The first note is dated August 22, 2022 and alleges the male tenant was drunk and hit a hydro pole with his car on August 16, 2022.

The second, dated August 23, 2022 from ML stating, "They always have parties and blast their music from midnight to morning; this kept us awake at night and greatly affected our daytime work."

The third letter dated August 24, 2022 from TG states, "I have a big problem with my neighbors which live in suite XXX because they frequently play loud music from late night till early in the next morning. My sister and I can't sleep because of the loud music."

In a fourth letter from AV dated August 25, 2022 the neighboring tenant writes, "My neighbor used to make big noise (loud music) from midnight to morning. That really affected my normal work and life. After a lot of patience, I finally sent a message to the

property manager XXXX to ask them to stop; otherwise I would call the police for a solution.”

A fifth letter from ZRC, dated August 26, 2022 provides, “My daughter and my wife can’t sleep well and they need to go to school and go to work in the day time. I really hope the property management can solve this problem for us.”

The landlord explained that the uniformity of the documents testifying he transcribed text messages and emails received from the various occupants into statements and the occupants sign their statement. The landlord did not upload the original messages into evidence. None of the occupants were called as witnesses.

The tenants’ Advocate states that the onus is on the landlord to prove on a balance of probabilities that the One Month Notice for Cause was issued on valid grounds and has failed to do so.

The Advocate states that the tenants do not deny that they “sometimes” have guests over and that “sometimes” there is noise and music. The tenants disagree with the landlord’s characterization of the frequency and loudness of the gatherings. The tenants contend that the written complaint are exaggerated relative to the real frequency, timing, duration, and extent/impact of the noise coming from their rental unit. The tenants further argue the noise did not “significantly interfered with”, “unreasonably disturbed,” or “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant” warranting the eviction notice.

The tenants state that the landlord did not clearly inform them of the severity of the matter. Since receiving the Notice, the tenants have tried their best to ‘keep the peace’. The landlord confirmed that the tenants’ conduct has improved.

The tenants also allege they have been wrongly blamed for the excessive noise coming from a neighboring suite on some of those occasions.

With regard to the written statements submitted into evidence by the landlord, the Advocate argues these statements should be given less evidentiary weight because the information contained in the statements is vague, the signatories did not appear at the hearing, therefore, were not subject to cross examination, and the complaints were written up after the tenants filed an Application for Dispute Resolution.

Analysis

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings,

as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 47(4) of the *Act* states that upon receipt of a notice to end tenancy for cause, the tenant may, within ten (10) days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The Notice was posted to the tenants' door on May 21, 2022. The tenants applied for dispute resolution on May 28, 2021. Accordingly, I find that the tenants were within the ten (10) day statutory limit to dispute the One-Month Notice.

The first issue in the tenant(s) application is a request for an order to cancel the One-Month Notice to End Tenancy for Cause dated May 21, 2022.

The first reason provided by the landlord to end tenancy was that the tenants "significantly interfered with or unreasonably disturbed the landlord or other occupants". The second reason cited on the notice is that the tenants "seriously jeopardized the health or safety or lawful right of another occupant or the landlord". It is only necessary for the landlord to demonstrate that one of the provisions was contravened in order to dismiss the tenant's application for cancellation of the Notice to end Tenancy for Cause.

The landlord must prove that it is more likely than not that the tenants acted as alleged on the Notice. If the landlord can, I will uphold the Notice and issue an order of possession. If the landlord cannot, I will cancel the Notice.

The Notice was issued on May 21, 2022. As such, I am unable to consider any events that occurred after this date when assessing the validity of the Notice. This means that the alleged drunk driving incident is not relevant to this proceeding. I explicitly make no finding as to whether the alleged incident on August 16, 2022 at 2 a.m. occurred as provided in DF's written statement. Rather, I find that as this alleged event occurred after the Notice was issued, it cannot form a basis on which the issuance of the Notice could have been justified. I will only consider events that occurred prior to May 21, 2022 for the balance of this decision.

The landlord under “Details of Cause” stated that over the last 6-12 months 4-5 “neighbors” complained multiple times about loud music played all night. The landlord confirmed that the “neighbors” were occupants of the building living in close proximity to the rental unit occupied by the tenants. The landlord stated that each time he received a complaint he spoke to the tenants and warned them about the noise complaints repeatedly asking them to lower the volume of their music. The tenants would acknowledge the issue, agree to lower the volume of music and noise levels coming from their rental unit, but compliance was short lived.

The tenants argue that although the landlord “passed the complaints” on to them, the landlord provided no evidence of documented verbal warnings or written warnings that clearly articulated the severity of the situation and the expectations.

Turning to the “details of cause” listed in the landlord’s notice to end tenancy, the One Month Notice was issued under s. 47(1)(d)(i) and (ii) of the *Act*. Unlike s. 47(1)(h), breach of a material term, s. 47(1)(d) does not require the landlord provide written notice to correct the situation. Any written notice or warning provided under s. 47(1)(d) is at the discretion of the landlord.

Notwithstanding the above, the landlord has provided very little in the way of direct evidence as to the conduct of the tenants and to show the conduct was *of a magnitude sufficient to warrant ending the tenancy*.

The landlord does not appear to have a clearly defined process for receiving and recording complaints and supporting information or information about how the landlord will assess, investigate and respond to complaints.

The witness statements provide no specific information about dates/times/duration or volume of the noise/music. It is the landlord who bears the burden of proof to show why these occupants felt the tenants significantly interfered with or unreasonably disturbed them and should do so by providing specific examples of incidents. I would have expected the landlord to provide copies of the complaint texts and emails from the occupants regarding the tenants’ conduct which led to the issuance of the Notice. The landlord has not done this. Had these documents been presented as evidence they may have provided the evidentiary basis to prove that the Notice was validly issued.

Similarly, the landlord must demonstrate how the tenants “jeopardized the health or safety or lawful right” of another occupant or the landlord. The tenants argue that they never jeopardized the health or safety of another occupant on the residential property. The “cause” as identified on the Notice is not narrowly limited to jeopardizing “health and safety” but also includes a “lawful right” of the occupants.

Section 28 of the Act conveys the right to quiet enjoyment of the rental unit to a tenant; however, the Act also provides that where a tenant unreasonably disturbs another occupant(s) of the residential property the landlord may evict the tenant under s. 47(1)(d) or (e) of the Act. This means if an occupant(s) of a residential property is unreasonably disturbed by another tenant, the landlord's remedy is to evict the tenant.

The landlord failed to prove the tenants' loud music that allegedly carried on into the early hours of the morning unreasonably disturbed and/or jeopardized other occupants' rights to quiet enjoyment of the residential property.

I fail to see any reason why those occupants affected by the tenants' alleged conduct could not have attended the hearing or provided a sworn affidavit regarding the specifics of the conduct including how that conduct impacted them directly or that the landlord could not have provided direct evidence on specific dates, times, duration.

I find the landlord has failed to discharge its evidentiary burden to show that the tenants acted as alleged on the Notice. The Notice is cancelled and of no force or effect.

Pursuant to section 72(1) of the Act, as the tenants were successful in the application, they may recover their filing fee from the landlord.

Conclusion

I grant the tenants' application and cancel the Notice. The tenancy shall continue until ended in accordance with the Act. The tenants may reduce their next month's rent by \$100.00 as recovery of the filing fee on a one time only basis.

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: October 11, 2022

Residential Tenancy Branch