



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to tend tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. Neither Party raised any issue with the receipt of the other’s evidence and each Party made reference to their evidence during the hearing.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 19, 2022. Rent of \$1,450.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$725.00 as a security deposit. On September 16, 2022 the Tenant was given a one month notice to end tenancy for cause dated September 15, 2022 (the “Notice”). The reasons stated on the Notice is that the 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;
- Put the landlord's property at significant risk.

The Notice attached a document setting out the details for the reasons.

The Landlord states that they are seeking to end the tenancy for three reasons:

- complaints by a lower tenant of noise and fighting;
- Smoking; and
- Police attendance.

The Landlord states that on one occasion shortly after move-in the Tenant smoked.

The Landlord states that this has not since occurred.

The Landlord states that the police were called to the unit 8 times between June and August 2022. Of these calls, some were made by the Tenant, and some were made by the lower tenants. The Landlord states that on one occasion both the police and ambulance were called and that this was disturbing to all the other tenants. The Landlord states that the complaints by the lower tenants were from daytime and nighttime noise by the Tenant walking around the unit and for the noise caused by fighting and yelling from the Tenant's unit. The Landlord states that they received another noise complaint a week ago. The Landlord confirms that no statements from the lower tenants were provided as evidence for this hearing. The Landlord states that the police spoke with the Landlord at the end of August 2022 and that the police were called because of continual fighting between the Tenant and an ex-boyfriend. The Landlord states that when the ambulance was called it was because the Tenant was assaulted by other tenants. The Landlord states that these other tenants informed the Landlord that the Tenant was the problem.

The Tenant states that the complaints from the lower tenants about living noise arose from the Tenant walking around the unit or dropping items on the floor. The Tenant

states that they also complained about the sound of the sliding glass door and that the runners on this door are damaged causing the noise. The Tenant states that the fighting that was complained about was because her ex-boyfriend was assaulting her. The Tenant agrees that on some occasions the Tenant called the police herself. The Tenant states that the lower tenants were also overheard planning to have the Tenant evicted and that these tenants made at least 5 or 6 calls to the police when nothing was happening.

The Tenant states that she was seriously injured by the assault from the other tenants and was taken away at the time by the ambulance. The Tenants state that the other tenants have significant mental health issues and are addicted to drugs.

The Tenant states that immediately after receipt of the Notice, the ex-boyfriend left the unit after which the Tenant tried to make peace with the lower tenants. The Tenant states that the ex-boyfriend has since only come around a few times, the most recent time being a week ago when the ex- boyfriend could not get into a shelter and the Tenant felt sorry for him. The Tenant states that the ex-boyfriend will never be allowed to see her again and that the Tenant is in counselling to help with that. The Tenant's Advocate argues that the Tenant is a victim of violence against her and that these are not grounds for an eviction.

The Landlord states that he was unaware of the Tenant being assaulted by the ex-boyfriend. The Landlord confirms that the Tenant has made complaints about the lower tenants and that sound is an issue as the building is old. The Landlord confirms understanding that the Landlord is responsible for the noise coming from a damaged sliding door being used normally.

Analysis

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk.

While I can accept that hearing an assault on a woman can be very disturbing, it would be contrary to the extreme if the woman, who is the victim of such assaults, is evicted for these assaults. While it is undisputed that the Tenant allowed this person into the unit, I accept the Tenant's evidence that after receipt of the Notice this person left the unit and will not be returning to stay at the unit. While the Tenant's judgement in allowing subsequent entry to that person is somewhat questionable, I accept that the Tenant is obtaining help for this and there is no evidence that the subsequent entries caused another disturbance.

The other noise complaints are primarily about living noises and given the Landlord's evidence of the age and sound transference in the building I find that these incidents do not substantiate that the Tenant willfully or negligently caused such noise. Instead I encourage the Landlord to take steps to reduce the sound transference between units.

The one incident of smoking at the beginning of the tenancy is not evidence of any disturbance.

The appearance of the ambulance would be disturbing but I accept the Tenant's undisputed evidence that again the Tenant was the victim of assault by another person that caused the ambulance to attend the unit. I also accept the Tenant's undisputed

evidence that the lower tenants have made unsubstantiated calls to the police thereby themselves causing a disturbance on several of the occasions of the police attendance as noted by the Landlord. For the above reasons I find on a balance of probabilities that the Landlord has not sufficiently substantiated that the Notice is valid for its stated reasons and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant's claim has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rents payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 07, 2023

Residential Tenancy Branch