



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing took place by conference call in relation to an Application for Dispute Resolution filed by the Tenant December 06, 2022 (the “Application”). The Tenant applied:

- To dispute a One Month Notice to End Tenancy for Cause dated November 30, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. S.D. appeared at the hearing for the Landlord and called D.G. and T.O. as witnesses.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence and there were no issues.

The parties were given a chance to provide relevant evidence and submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

There is no issue that there is a tenancy agreement between the parties.

The Notice was submitted. The Notice has an effective date of December 31, 2022. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has
 - a. significantly interfered with or unreasonably disturbed another occupant or the Landlord
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the Landlord

The Notice includes Schedule A which sets out the basis for the Notice. Schedule A sets out noise complaints starting December 04, 2021, and continuing until October of 2022. Schedule A sets out dates the Tenant was told about the noise complaints and issues around noise coming from the rental unit. Schedule A outlines seven incidents of complaints made by other tenants of the building about the rental unit. Schedule A outlines five times the Tenant has been told about the complaints. The complaints mostly relate to noise coming from the Tenant's children in the rental unit although there is a complaint about items being thrown off the balcony of the unit.

The Landlord's documentary evidence includes noise complaints from other tenants of the building about the rental unit, notes and letters sent to the Tenant about the noise complaints and a letter to the Tenant about items being thrown off the balcony of the unit.

S.D., for the Landlord, testified as follows. The complaints noted in the Landlord's materials are not just from one tenant living below the rental unit, other tenants of the building have also made complaints. Some of the complaints involve noise at 6:00 a.m. The issues include loud music being played in the rental unit, the Tenant's children screaming down halls and the Tenant's children running around the parking lot. S.D. has told the tenant living below the rental unit to contact police if there are further issues because of how them and the Tenant deal with each other. Other tenants are saying the Landlord is not protecting their right to quiet enjoyment.

T.O. lives in a unit below the rental unit and testified as follows. T.O. has lived in the building for three years. T.O. has had roommates who have moved out because of the noise coming from the rental unit. The noise from the rental unit is excessive and occurs every morning. T.O.'s current roommate says he is woken up daily by noise from the rental unit including jumping, smashing and banging at 6:00 a.m. T.O.'s current roommate wants to move out because of the noise. The screaming and fighting between the Tenant's children is excessive. T.O. lives directly below the rental unit and gets the brunt of the noise but others complain about it as well. T.O. has talked to the Tenant's spouse about the noise issue; however, their concerns were ignored. Police have had to attend given an argument between T.O.'s roommate and the Tenant over the noise issue.

D.G. is a resident manager of the building and testified as follows. D.G. has received numerous noise complaints from other tenants living around, above and below the rental unit. Other tenants have heard the Tenant's children screaming from the rental unit to the point where they are concerned for their safety. An incident occurred where D.G. was on the other side of the building and could hear loud music coming from the rental unit. D.G. spoke to the Tenant who said they guessed their children had the music going. The Tenant's children run around and scream which wakes other tenants up. The situation is out of control.

S.D. sought an Order of Possession effective May 31, 2023.

The Tenant testified as follows in reply. The building is very noisy. The carpet in the rental unit was replaced with laminate which is very noisy for people below the rental unit. The Tenant can hear people walking upstairs, music from other units and children screaming from other units. The Tenant and his spouse have done everything they can to reduce the noise from their unit. The noise complaints have gotten more frequent and are excessive despite the noise being reduced. Other tenants have made noise complaints when the Tenant and their children are simply doing regular activities and going about their daily lives. Most complaints were made by T.O.'s new roommate. The noise coming from the rental unit is not unreasonable.

The Tenant provided the following documentary evidence:

- Written submissions about their children's schedule, what they have done to minimize noise, details about their spouse being deaf and not able to speak, harassment and assault from a tenant in the unit below, issues with the

legitimacy of the complaints and details about the incident involving glass being thrown off the balcony of the unit.

- A letter from their children's caregiver about their children being well behaved and the complaints in the Landlord's evidence being false.
- A letter from their spouse stating noise complaints and complaints about items being thrown off the balcony are false.
- Email complaints from their spouse about a tenant in the unit below banging on the ceiling.

Analysis

The Notice was issued under section 47 of the *Residential Tenancy Act* (the "Act") which allows a landlord to end a tenancy when a tenant or others allowed on the property by the tenant have significantly interfered with or unreasonably disturbed other occupants of the property.

The Landlord must prove the grounds for the Notice under rule 6.6 of the Rules. The standard is "on a balance of probabilities" meaning it is more likely than not the facts are as claimed.

The Landlord has proven that it is more likely than not that the Tenant and their children have significantly interfered with or unreasonably disturbed other occupants of the building.

The Landlord provided convincing evidence of numerous and ongoing noise complaints from other tenants of the building about the rental unit. The history of complaints is documented in writing. Although names of the other tenants making the complaints have been removed, D.G. gave affirmed testimony about the complaints they have received. Many of the complaints do include dates and times. The complaints are from more than just the tenant living below the rental unit. D.G. and T.O. gave affirmed testimony confirming the noise issue with the rental unit and I had no concerns about the reliability or credibility of their testimony.

I am satisfied based on the Landlord's evidence that the noise issue has significantly interfered with or unreasonably disturbed other occupants of the building based on the

following. The number of complaints documented. The fact that complaints have been made from multiple other tenants. The number of times the Landlord has warned the Tenant about the noise issue. The noise described in the Landlord's evidence includes loud banging, yelling, screaming and stomping, all of which is more than noise caused by daily activities. The Landlord's evidence shows the Tenant's children screaming so loud that other tenants are concerned for their safety, which shows the level of screaming and that it is not simply noise from daily activities. Further, the noise is described as excessive throughout the Landlord's evidence. There are complaints about noise as early as 6:00 a.m. which is outside the time others should expect there to be excessive noise coming from the rental unit. As well, the noise is said to be a daily occurrence which shows it is significant.

I acknowledge the Tenant's arguments in this matter. However, the Landlord has provided convincing evidence showing a pattern of noise complaints about excessive noise that is causing significant interference with other tenants of the building.

I have reviewed the Notice and it complies with the form and content requirements of section 52 of the *Act*.

I uphold the Notice and dismiss the Tenant's dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* requires an arbitrator to issue a landlord an Order of Possession if a tenant disputes a notice to end tenancy, the notice is upheld or the dispute is dismissed and the notice complies with section 52 of the *Act*. Under section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession.

S.D. asked for an Order of Possession effective May 31, 2023; however, given this Decision is not being issued until May 18, 2023, I issue the Landlord an Order of Possession effective one month after service on the Tenant.

The Tenant is not entitled to recover the filing fee because they have not been successful in the Application.

Conclusion

The Landlord is issued an Order of Possession effective one month after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme 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: May 18, 2023

Residential Tenancy Branch