



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenants November 04, 2022 (the “Application”). The Tenants applied:

- To dispute a One Month Notice to End Tenancy for Cause dated October 25, 2022 (the “Notice”)
- To recover the filing fee

The Tenants appeared at the hearing. The Landlord appeared at the hearing. The Landlord called N.H. as a witness at the hearing.

Both parties provided evidence for the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package from the RTB March 29, 2023, and said they were prepared to proceed with the hearing. Both parties received the others evidence.

The parties were given an opportunity 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. Are the Tenants entitled to recover the filing fee?

Background and Evidence

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

The Notice is in evidence. The grounds for the Notice are:

- ☒ 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 Details of Cause state:

Details of the Event(s):
After warning notice to tenant issued Sept 17th 2022 about disrupting quiet enjoyment to the tenant below, continued to do so on Oct 18, 2022, by placing radio with loud volume next to adjoining door. Acknowledging this Action has taken place and threatens to CONTINUE IT
Purposely restricting the below tenants ability to have heat in their unit

The Landlord stated as follows. On September 14, 2022, the Tenants disrupted the downstairs tenant's right to quiet enjoyment by playing a radio at full volume. A caution notice was given to the Tenants October 24, 2022. The Tenants have breached the downstairs tenant's privacy, right to quiet enjoyment and rights under the *Residential Tenancy Act* (the "Act"). The Tenants have restricted the downstairs tenant's heat.

The downstairs tenant, N.H., testified as follows. N.H. sent the Landlord a letter October 24, 2022, about the Tenants leaving a radio at full volume beside the door between the upstairs and downstairs suites. The radio incident occurred September 14, 2022, when the radio was left on for 24 hours. N.H. spoke to Tenant S.H. about why a radio had been left blasting between their doors and Tenant S.H. said they thought N.H. was smoking inside so they were teaching N.H. a lesson. Tenant S.H. turned the radio off but warned N.H. that if they believed N.H. was smoking inside again, they would turn the radio back on. The radio was turned on for one day, then a couple days later and again for three days straight. N.H. contacted the Landlord about the radio incidents.

N.H. further testified that their suite did not have heat at the end of October and that the Landlord told N.H. the Tenants had accidentally turned the furnace off. N.H. believes the Tenants turned the heat off on purpose.

N.H. testified that issues with the Tenants are ongoing and include them storming around upstairs, slamming doors and watching N.H.

The Tenants said N.H. is not telling the truth. Tenant S.H. said that on the 16th they turned their radio in the laundry room on; however, it was not beside the door to the downstairs suite and was not full blast. Tenant S.H. said the radio was no louder than N.H.'s television. Tenant S.H. said they turned the radio on because N.H. was smoking in the downstairs suite. Tenant S.H. said N.H. did speak to them about the radio and they told N.H. they share a house and they can hear everything that goes on in the downstairs suite.

Tenant S.H. said they do not think the radio was left on for 24 hours and thinks it was left on from the afternoon of the 16th until the next morning. Tenant S.H. said they turned the radio on twice when N.H.'s television was loud and N.H. was smoking inside. Tenant S.H. said the radio was only on for 20 minutes the second time. The Tenants acknowledged the Landlord contacted them about the radio incidents. The Tenants said they had already talked to N.H. and the Landlord about N.H. smoking inside. Tenant S.H. said they did not get a response about the smoking and were frustrated so turned the radio on. The Tenants said they did not receive a warning about the radio incident September 17, 2022, as stated in the Notice.

The Tenants said they turned the furnace off accidentally and turned it back on as soon as they were told there was an issue with the heat.

Analysis

The Notice was issued under section 47(1)(d) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice under rule 6.6 of the Rules of Procedure.

I can only consider the issues outlined in the Notice. I cannot consider other issues the Landlord did not include in the Notice. Both parties provided a lot of evidence about other issues not included in the Notice.

The only two issues included in the Notice are the radio incidents and heat issue.

I am not satisfied based on the evidence provided that the Tenants intentionally turned the furnace or heat to the downstairs suite off because there is not convincing evidence of this before me. The alleged heat issue is not sufficient grounds for the Notice.

In relation to the radio incidents, I accept these occurred twice because Tenant S.H. acknowledged this. I am not satisfied based on the evidence provided that the radio incidents occurred more than twice because there is not convincing evidence of this. The details of the incidents are disputed between the parties. The Landlord and N.H. did not provide independent objective evidence of the radio incidents, such as audio recordings. I am not satisfied that the two radio incidents proven are serious enough to end this tenancy under section 47 of the *Act*.

In coming to the above conclusion, I note the dates involved. The evidence before me shows the radio incidents occurred in September and on October 18, 2022. I do not see documentary evidence of the Tenants being warned about the radio incident September 17, 2022. The Tenants were given written notice about the radio incidents on October 24, 2022, and the Notice was issued the next day. I do not see in the evidence that there was a further radio incident on October 24, 2022, to justify the Notice being issued the following day.

Given the above, I am not satisfied the two radio incidents proven are sufficient grounds for the Notice. However, I find Tenant S.H.'s actions regarding the radio incidents to be inappropriate and, if these types of actions continue, the Landlord can serve another One Month Notice on the Tenants for continued interference with, and disruption of, the downstairs tenant.

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants have been successful in the Application and are entitled to recover the \$100.00 filing fee under section 72(1) of the *Act*. The Tenants can deduct \$100.00 from their next rent payment under section 72(2) of the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants can deduct \$100.00 from their next 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 *Act*.

Dated: May 23, 2023

Residential Tenancy Branch