



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") under Section 47 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent, the Tenant, and her legal advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by registered mail and email on December 15, 2022, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt, deemed served on December 20, 2022 and December 18, 2022 respectively;
- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on December 31, 2022, Canada Post Tracking Number

on cover sheet of decision, the Landlord confirmed receipt, deemed served on January 5, 2023;

- the Tenant's second evidence package served by registered mail and email on April 5, 2023, the Landlord confirmed receipt, deemed served on April 10, 2023 and April 8, 2023 respectively; and,
- the Landlord's evidence package served by registered mail on February 23, 2023, Canada Post Tracking Number on cover sheet of decision, the Tenant confirmed receipt, deemed served on February 28, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy in March 2022. The fixed term ended on March 31, 2023, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,100.00 payable on the first day of each month. A security deposit of \$1,050.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The effective date of the One Month Notice was March 31, 2023.

The Landlord provided further details of the causes to end this tenancy as:

The tenant has been raising noise issues against residents of neighboring units none of which was confirmed by any other resident or building management. In numerous occasions, the tenant used languages of racial discrimination and harassment against neighbors, building staffs, and other strangers.

The Landlord testified that the Tenant has issues with the developer, with the concierge, with neighbouring units and with us. He said the Tenant is complaining about everything which is not appropriate. The Landlord stated she started to use harsh tones, racial discrimination, and sometimes, screaming. All the different people could not take it anymore and have chosen to stop talking to the Tenant over the telephone. The only way people will communicate with the Tenant is via email.

Two issues for the Tenant are noise from the HVAC, and daily noise from surrounding units. The HVAC noise is ongoing to this day.

When the Tenant first moved in, she spoke to a concierge about the unknown banging noises. The concierge told the Tenant that she would deal with it. Several days later, the Tenant had not heard anything from the concierge. Unknown to the Tenant, the concierge had been dealing with an issue of the parking garage gate being broken. The Tenant was annoyed. She was hearing this ongoing noise, but all she knew was that for over two days, her attempts to communicate with the concierge was not productive. She got annoyed with the concierge, but later apologized after hearing the reason for the concierge not calling her back.

On February 10, 2023, neighbours of the Tenant wrote a letter after visiting the Tenant attesting to the continuous and loud tapping noise coming from her HVAC system. On April 17, 2023, at the Tenant's request, a worker from the developer came into the Tenant's rental unit at night to assess the amount of noise. The worker inserted a piece of foam into the metal housing of the HVAC system which has made all the difference. The Tenant maintained that the level of noise has been significantly muffled, and the tapping, banging sound, is almost to the point of being quiet.

There continues to be a hammering noise that has not abated. The tenant directly above the Tenant confirmed in a December 30, 2022 email that he also hears the hammering noise, but it does not seem to bother this tenant as the noise is coming from below the Tenant and he is further away from its source.

The Tenant gave testimony and evidence about neighbours to her rental unit who have two daughters, 9- and 15-years old. The Tenant has experienced much noise from these residents since their move-in on April 3, 2022. The Tenant often hears their front door slamming shut or loud banging coming from the two girls' bedrooms. She said the family often yells and screams from inside their rental unit as well as in the hallway. The Tenant has texted the father of the family, but he does not respond. The Tenant received a bylaw complaint against her from these residents stating she is harassing the family. On August 11, 2022, the Tenant submitted a bylaw complaint against this family and the noise they make. The Tenant heard nothing more about this matter.

The father of the 9- and 15-year-old daughters has claimed the Tenant made a racial slur against him. The Tenant stated she has never made any racial comments to him. On November 3, 2022, the Tenant wrote the property manager of the building documenting that she did not make any racial slurs at those residents. She outlined how she has been threatened by members of this family, and how the father's behaviour has been rude and aggressive. The noise from this family persists.

The Tenant wants the One Month Notice cancelled.

The Landlord is seeking an Order of Possession.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Although this decision will be rendered more than 30 days after the conclusion of the proceedings, Section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period set out in subsection (1)(d).

Rules of Procedure, 7.4 states:

7.4 Evidence must be presented: *Evidence must be presented by the party who submitted it, or by the party's agent.*

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Section 47 of the Act is the relevant section of the legislation, it states:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(d) *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,*

...

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received, and*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord's One Month Notice was deemed served on the Tenant on December 20, 2022. I find the Landlord's One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on December 23, 2022 within 10 days after the date the Tenant received the One Month Notice.

The Landlord stated that the Tenant has issues with the developer, with the concierge, with neighbouring units and with the Landlord. He said the Tenant started to use harsh tones, racial discrimination, and was sometimes, screaming at building workers. The Landlord claims that the building workers have stopped talking to the Tenant and will only communicate with the Tenant via email. The Landlord neither provided any evidence about his above submissions nor pointed to uploaded evidence supporting his claims.

The Tenant and her advocate presented their evidence dealing with the claims the Landlord submitted. Based on the totality of the evidence presented, I find the Landlord has not proven on a balance of probabilities that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. I cancel the Landlord's One Month Notice, and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

Conclusion

The Tenant's application is granted. The Landlord's One Month Notice is of no force or effect.

The Tenant may withhold \$100.00 from one month's rent to recover her application filing fee.

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 29, 2023

Residential Tenancy Branch