



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

On January 3, 2023, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 9, 2023, this Application was originally set down to be heard on May 2, 2023, at 9:30 AM. This Application was subsequently adjourned, for reasons set forth in the Interim Decision dated May 2, 2023. This Application was then set down for a final, reconvened hearing on June 1, 2023, at 1:30 PM.

Both Tenants attended the final, reconvened hearing, with J.F. attending later as a witness. The Landlord attended the final, reconvened hearing as well, with M.A. attending later as a witness. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Service of the Notice of Hearing package was discussed at the original hearing, and there were no concerns with this service. Service of the Tenants’ evidence was discussed, and the only issue was that the Landlord was not able to view the Tenants’

digital evidence. As such, this digital evidence will be excluded and not considered when rendering this Decision. However, the Tenants' documentary evidence will be accepted and considered when rendering this Decision.

Service of the Landlord's evidence was discussed, and the only issue was that the Landlord served this evidence late. However, Tenant B.C. confirmed that they had reviewed this evidence and were prepared to respond to it. As such, the Landlord's documentary evidence will be accepted and considered when rendering this Decision.

As well, at the original hearing, as per Rule 2.3 of the Rules of Procedure, the parties were advised that the hearing would primarily address the Landlord's Notice, and the other Tenants' monetary claim was dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application 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 if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy agreement started on April 1, 2021, that rent was due in the amount of \$1,780.00 per month, and that it was due on the first of each month. A security deposit of \$890.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

At the original hearing, the Landlord advised that the Notice was served to the Tenants by email on December 28, 2022, and the Tenants clearly received this as they disputed it within the legislated timeframe. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord [and/or] put the landlord’s property at significant risk.” The effective end date of the tenancy was noted as February 1, 2023, on the Notice.

The Landlord initially testified that the Notice was served because the Tenants caused substantial water damage to the rental unit on February 20, 2022, and that she served a notice to end the Tenant’s tenancy sometime after that. However, she acknowledged that this was simply a letter, and not on an approved form and she stated that the reason for this was that she was unaware of her rights and responsibilities as a Landlord under the *Act*. When she was asked why she then waited to serve the Notice in December 2022 if this matter was so significant almost a year prior, but she could not provide any reasonable response that would cause me to consider this being an acceptable reason in assessing the validity of the Notice.

As such, the Landlord was prompted to make submissions on other reasons the Notice was served. At the original hearing, she advised that there were complaints in September and October 2022 regarding unreasonable noises that were coming from the rental unit in the early hours of the morning, disturbing the resident below. She referenced two strata warnings that were issued to corroborate her position regarding the existence of this noise.

She also advised that the Notice was served due to a problem she had when conducting an inspection of the rental unit; however, this incident was not noted in the Details of Event(s) section on the bottom of the Notice as a reason for service of the Notice. She was informed that she cannot simply serve the Notice for a documented set of reasons, and then introduce a different reason for which the Notice was served. This

would not only be unfair to the other party to proceed on this basis, but it would also be illogical to discuss other matters that were not noted on the Notice as the Tenants would not have known these other alleged reasons, or had an opportunity to formulate a defence for such accusations. As such, the submissions on this alleged incident were disregarded.

B.C. denied that they were making any unreasonable noises. He advised that the strata notice dated September 23, 2022, was a warning, and the strata notice dated October 19, 2022, was a complaint. However, he testified that this complaint was later withdrawn by the strata as the noise complaint from the resident below the rental unit was determined to be false. As well, he referenced a signed statement, submitted as documentary evidence, from a neighbour who confirmed that no unreasonable noise was ever heard.

At the final, reconvened hearing, the Landlord's witness, M.A., advised that he made five or six complaints to the strata about unreasonable noises coming from the rental unit. However, he later contradictorily stated that he could not remember how many times he complained, because it was "so many times". He testified that these noises started approximately 11 months ago when he first moved in. He stated that the noises consisted of "workshop" type sounds, "heavy walking", "dragging of furniture", and "heavy banging", and that they occurred late at night, every hour to hour and a half. He submitted that he talked to the Tenants at some point "last year" about this noise and they agreed to rectify this matter. He advised that when he reported these issues to the strata, they informed him that they would fine the Landlord or send a warning notice; however, nothing was done.

When he was asked if he had any proof to substantiate the frequency that these noises occurred or the intensity of these noises, he stated that he was not able to record these as they were "too low a frequency", even though the noise was "booming". As well, he acknowledged that he did not attempt to document these noises in any other manner.

Neither the Landlord nor the Tenants had any questions for M.A. As such, he was asked to exit the hearing.

The Tenants then had their witness, J.F., attend the hearing, and he advised that he was the strata manager at the time M.A. made these complaints. He testified that the strata policy would be to reach out to M.A. and the Landlord about this noise issue and correspondence would have been exchanged. He stated that after a more thorough

investigation was conducted with building security and the building manager, it was determined that these noise complaints from M.A. were determined to be unsubstantiated and baseless, and M.A. was found not to be credible. As a part of this investigation, he submitted that the Tenants' access fobs were checked, as was the security camera footage, and the Tenants were not in the building during the times that M.A. complained of unreasonable noises. Furthermore, he stated that there were no other complaints of unreasonable noises from the rental unit from any other units in the building.

As a result of this investigation, he testified that the strata contacted M.A. and cautioned him from continuing to make unfounded, unwarranted complaints of noise. As well, he was warned to refrain from going to the Tenants' door to threaten them. However, he noted that the strata was concerned about M.A.'s aggressive and volatile behaviour.

As well, he advised that the Landlord was informed of the strata's findings within 21 days of October 19, 2022, and that no fines or further warnings would be issued. He testified that contact with the Landlord regarding this was done via at least two direct phone calls, and at least four emails. He stated that the Landlord notified him that she would be making arrangements to evict the Tenants despite the results of the strata's findings, and while he told her that it was her decision, he cautioned her not to do so as the noise complaints were not valid, there was no evidence to corroborate the existence of any noise, and it would not be fair to do so. He testified that he also notified her that he would be providing this exact testimony if called upon, and he stated that she did not like this statement.

The Landlord advised that she had never spoken to J.F. on the phone, and she then proceeded to ask him a series of questions. She asked him what his relationship was to the Tenants, and he replied that he had never met them before. It should be noted that the Landlord would proceed to ask questions, and then when J.F. was attempting to answer, she would interject with a barrage of commentary and accusations. She was cautioned to refrain from this behaviour as it was unproductive and pointless because J.F. was unable to answer her question, and I was unable to record his response. However, she continued to behave in this manner, and it became necessary to mute the Landlord multiple times as she was unable to control herself and refrain from this unruly behaviour.

The Landlord denied getting any correspondence from the strata about being informed of the results of the investigation, and she asked J.F. who conducted the investigation

and where the corresponding report was. J.F. read directly from emails that were sent to the Landlord regarding this matter. He testified that an email was sent to the Landlord on May 23, 2023, where the Landlord accused him of testifying for the Tenants and that he did not have the authority to do so. He then read from an email dated November 14, 2022, where the Landlord was informed that the investigation into M.A.'s complaints of noise will stop because those allegations were determined to be unfounded, and three letters were attached to this email. He stated that the building manager also conducted a separate investigation, and the same findings were determined about M.A.'s false allegations. As well, he submitted that the building security indicated that M.A. was known to be a problematic and difficult person. He stated that he attempted to be as transparent as possible with these communications with the Landlord; however, the Landlord appeared to be more aggravated that the noise complaints were determined to be unfounded.

He then read from an email dated November 16, 2022, where the Landlord was informed that there were no noise issues found and that the Tenants were not deemed to be the problem, and the Landlord responded that same day by asking for the report. He read out the email address that was used in these communications, and the Landlord confirmed that that was her correct email address.

The Landlord reiterated that she never received this report, and that she never spoke to J.F. on the phone. She then asked him if M.A. was interviewed, and J.F. confirmed that he was interviewed multiple times. He stated that it was the duty of the strata to prove the existence of an infraction, and he testified that 20 to 25 different complaints and dozens of emails sent from M.A. were addressed. When it was determined that there was no breach found, he stated that M.A. was informed that his complaints were not determined to be valid, and M.A. became aggressive. He reiterated that the Landlord was informed in writing of these findings.

The Landlord then asked J.F. when these alleged phone calls to her were made, and he stated that they were done approximately 21 days after the October 19, 2022, strata complaint. The Landlord stated that J.F. was removed as the strata manager, and that it is her belief that he is "colluding" with the Tenants.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenants dated December 27, 2022, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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

- (ii) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (iii) put the landlord's property at significant risk;*

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

As noted above, with respect to the validity of the reasons indicated on the Notice, I note that the onus is on the party issuing the Notice to substantiate the causes for service of the Notice. When reviewing the totality of the evidence and testimony before me, while the Landlord had M.A.'s direct testimony about the unreasonable noises that he heard, I find it curious why he had no documentation of the significance of this noise given that it had apparently occurred for approximately 11 months already. I find that his submissions of "booming noise", "workshop" type sounds, "heavy walking", "dragging of furniture", and "heavy banging" to be inconsistent with being "too low a frequency" to record. I do not find it plausible to conclude that absolutely none of these aforementioned noises could not have been captured in some way via an audio

recording at some point over the 11 months. Moreover, given that this had allegedly occurred for such an extended period of time, surely M.A. could have devised some manner to substantiate his claims of the existence of said unreasonable noises. Without any evidence to support M.A.'s solemnly affirmed testimony of hearing unreasonable noises, I give little weight to these submissions.

In weighing this against the Tenants' evidence, I have before me solemnly affirmed testimony from J.F., who was the strata manager at the time and handled these complaints from M.A. While there was a warning from the strata about a noise complaint dated September 23, 2022, and a further complaint about noise dated October 19, 2022, given that there were no further warnings, complaints, or fines issued after this latter date, I find that this is consistent with J.F.'s testimony that an investigation was conducted and it was determined that M.A.'s complaints were unfounded, baseless, and unwarranted, and that he was determined not to be credible.

Regarding the Landlord's claims that she had no contact from J.F. regarding the outcome of the strata's investigation, I find it important to note that the noise bylaw complaint issued by the strata, dated October 19, 2022, notes that the strata was considering fining the Landlord up to the amount of \$200.00, and that the Landlord was granted an opportunity to answer to the complaint. However, there was no evidence presented that the Landlord ever contacted the strata about this. In my view, it would seem logical that if the Landlord were potentially being fined for a noise issue, she would take the opportunity to contact the strata to attend a hearing about this matter. Moreover, by attending the hearing, the Landlord would have been able to gain more information about the details of this complaint, and any evidence from the strata would have likely helped her justify service of the Notice. It truly makes little sense why the Landlord would not have contacted the strata about this latest notice.

Furthermore, had the Landlord truly believed that there were unreasonable noises coming from the rental unit, which resulted in the October 19, 2022, complaint notice, it is then not clear why the Landlord would have waited over two full months to serve the Notice. When reviewing the totality of the evidence and testimony before me, I find that the testimony of J.F. is more consistent and logical. Moreover, the Landlord had scant evidence to prove there was the existence of any unreasonable noises emanating from the rental unit. In addition to that, the Landlord's combative, argumentative, and inappropriate conduct during the hearing, which led to her being muted, was more consistent with J.F.'s testimony that she was cautioned not to proceed with serving the Tenants the Notice, yet she continued to do so intentionally anyways as she did not like

the information that he was providing. In addition, the testimony of J.F. informing the Landlord approximately three weeks after conducting an investigation on or around October 19, 2022, and determining that there would be no further investigation would be consistent with an explanation for the timing of service of the Notice. I find that this further supports a reasonable conclusion that J.F.'s testimony is more reliable than that of the Landlord.

Finally, I note that it was clearly evident that the Landlord knew little of her rights and responsibilities as a Landlord, as was evidenced by her attempts to end the tenancy without using the approved forms, among other breaches of the *Act*, and she acknowledged as much throughout the hearings. In my view, I find it reasonable to conclude that based on her demeanour and conduct, she was acting of the mindset that she could manage the rental unit in any manner that she saw fit, and was not receptive to any information that would possibly benefit her. Ultimately, I find that all of the above factors cause me to question the Landlord's credibility and the legitimacy of much of what has been presented.

Based on my assessment of the evidence and testimony before me, as the burden rests with the Landlord to provide supporting documentary to justify the validity of the Notice, I do not find there to be any credible evidence corroborating her claims of unreasonable noises from the rental unit. Moreover, given my doubts of the reliability and credibility of the Landlord and of M.A., I give no weight to their testimony. As such, I prefer the Tenants' evidence on the whole. As I am not satisfied that the Landlord has sufficiently substantiated the grounds chosen on the Notice for ending the tenancy, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. The Tenants are permitted to withhold this amount from a future month's rent.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause dated December 27, 2022, to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: June 16, 2023

Residential Tenancy Branch