



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENTROL INVESTMENTS INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated October 25, 2019 ("One Month Notice").

The Landlord, K.J., the Tenant, J.S., and counsel for the Tenant, C.B. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing. However, the Landlord acknowledged that he had not submitted any evidence in response to that of the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked for the Landlord's name in this matter, as the Landlord identified on the Application and the One Month Notice was different than that in the tenancy agreement. K.J. advised me that he is owns the company, and that the company owns the residential property. Therefore, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2, to include K.J.'s name, as the company identified in the Application is not a party to the tenancy agreement, which contractually binds the Parties in this matter.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2010, with a monthly rent of \$1,150.00, which is currently \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$575.00, and no pet damage deposit.

The Landlord served the Tenant with a One Month Notice that is signed, dated and has the rental unit address, was served in person on October 26, 2019, and has an effective vacancy date of November 30, 2019. The grounds set out on page two of the One Month Notice are 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; and
- the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the Landlord said that he has received complaints from two other tenants in the residential property about noise coming from the Tenant's apartment. He said the complaints are about "jumping and bouncing and banging balls, which mostly happens on weekends." The Landlord said he has "issued many verbal and written warnings, and that the noise level would stop for awhile and then escalate again. In mid-August when she returned from being away, the noise started again." The Landlord referred me to letters of complaint from two other tenants, S.C. and G.R.

The Tenant said she moved into the rental unit almost ten years prior. She said her son

is six years old and that she did not have any complaints until 2017, after a new tenant, S.C., moved in below her. She said that after she received the first complaint, she, "...immediately removed all balls and whatever might cause extra noise. Two years passed and there were no more complaints until August 2019." The Tenant said this is inconsistent with the Landlord's implication that the noise from her unit was "ongoing". The Tenant also submitted letters of support for her from other neighbours in the residential property.

Counsel said that the Tenant disputes the One Month Notice on three main grounds:

1. Prejudicial motive to the eviction and complaints;
2. The source of the noise as coming from her suite is unreliable; and
3. The severity of the noise is not at an unreasonable level or frequency.

1. *Prejudicial Motives for Eviction Notice*

First, Counsel argued that there were prejudicial motives to the eviction notice, which means it was issued in bad faith. Counsel said the Tenant moved into the building as a single adult in 2010, but she gave birth on August 1, 2013, and continued living in the one-bedroom suite. Counsel said the Tenant's child "...has been a contentious issue ever since he was born. . . [the Tenant] was asked how her search for a new apartment was going."

Counsel said the complaint letters demonstrate a level of discriminatory sentiment. She described that S.C. in the unit below, "...always says 'it's the child banging, jumping, clamouring'...". She said he described one incident of "the child playing with a top or something at the same time as the Tenant was vacuuming." Counsel said: The tenor of these letters makes it clear that the Landlord wants [the Tenant] gone from the building, and has invited her to find other accommodation." She said the complaints are discriminatory and not credible, given these sentiments. "The discriminatory sentiments have coloured their judgment, and that an eviction is warranted should be given little attention" she said.

Counsel noted that in S.C.'s letter dated August 18, 2019, he states: "I do not notice his mother's walking." Counsel said that S.C. is determined that the noise is coming from the child. In his letter dated September 1, 2019, S.C. complains of a "little boy's running."

The complaint letter dated August 26, 2019, has to do with the Landlord dealing with

S.C.'s light fixture, which he says rattles, because of the activity in the Tenant's suite. He also addressed this in his letter dated September 1, 2019:

...the banging noise is as bad as it has ever been! I took a recording this morning before 9:00 am as it was [indecipherable] a little boy's running. Please also let me know when I can get a bedroom light fixture that doesn't rattle, as mine is unable to tighten. Thanks.

Counsel said that S.C.'s complaints only relate to the activities of the young boy. S.C. said: "I would not complain if these were normal sounds of people walking, talking, . . . I would gladly accept a transfer to an equivalent suite in the building."

Counsel said:

As the Tenant was vacuuming, there was noise from above; however, it would be difficult to discern what other noise there was, but [S.C.] is determined to find that it is a child. Her son was playing with a top while she was vacuuming; she thought this would not be an issue, since there was vacuuming. As soon as this complaint was made, they ceased doing this activity. This is the nature of the complaint.

Counsel said that the Tenant works during the day and that the child is at day care six days a week. She pointed to a letter from E.A., a neighbour who babysits for the Tenant on Sundays. E.A. said:

[The Tenant] has a reputation, both professionally and personally, as considerate and respectful. I have witnessed her interacting with her co-tenants in these same ways. In the apartment, [the Tenant] is especially conscientious about sound. She and [the child] are up and out of the building early ([the child] attends before and after school care while [the Tenant] is working), and bedtime is early. On weekends [the child] attends activities on Saturday, and on Sundays he is with me.

The Landlord responded, as follows.

Basically, she's occupying the top unit – the corner unit that has an open patio . . . you can't look after a child every moment. It's easy to fall off... you have to be careful as a parent of your surroundings. This eviction is because of excessive noise. A growing child has a lot of energy and makes a lot of noise.

The Landlord posited:

It's possibly [the Tenant] and the child making the noise, or it may be when guests are staying over? Domestic issues. Throwing things around at the walls. The unit is fully carpeted. There's no reason for light fixtures to be rattling all the time. I'm just trying to settle the issues between these three units

Counsel said that the Landlord's comments lead to the next point or ground of disputing the One Month Notice.

2. Unreliable Allegation of the Source of Noise

The Landlord pointed to a complaint letter dated October 8, 2019, from another tenant, G.R., who has lived in the residential property for over 20 years. The Landlord said that G.R. said the noise continues throughout the day and evening, even until early in the morning. G.R. states:

I have held back making a complaint to her and you about constant dragging and dropping of pots or furniture on her patio all summer, somewhat continuously through the day and evenings, even at the most inconsiderate hours of 4:30 A.M., 5:00 A.M., 6:30 A.M., 11:30 P.M. & and 12:30 a.m. As my bedroom is directly under her patio, I have experienced the grinding patio door and squeaky floor boards which can be expected and not helped, but all these other noises are above and beyond annoying.

Counsel said there is evidence that the noise referenced in G.R.'s letter is not coming from the Tenant's unit at all, as "...she was out of town at material times stated in [G.R.'s] complaint. Counsel said the Tenant was out of town for the entire summer, between June 21 and August 12, 2019. The Tenant submitted a copy of her bank statements as evidence supporting this. The bank statements show entries from a variety of locations, other than the rental unit city. Counsel said the fact that the Tenant was away throughout the summer is also acknowledged by the Landlord. Counsel said:

There is a strong likelihood that [G.R.] heard noise from the common area that is a deck with several chairs for guests to use, and it's located above and adjacent to the complainant's suite. There are two issues with the reliability of this statement: 1. [the Tenant] wasn't even there; and 2. There is a reasonable source for where this noise might be coming from.

The Landlord said no one uses the common area patio, but he did not say how he knows this.

Counsel went on to say that the Tenant's evidence is that she and G.R. have been amicable neighbours for some time. She said his complaint came up after the Tenant heard a banging from below – someone knocking on the ceiling below her. She was concerned that another complaint was going to be made. It appears that [the Landlord] approached G.R. and asked if he had been knocking on his ceiling. However, as he states in his letter, G.R. had been out of town on the days in question, "...so I could not have possibly made such noises." Counsel said that the accusation of having banged on his ceiling angered G.R., but the Tenant didn't complain about G.R. "Rather, the Landlord seems to be instigating anger between these two tenants, encouraging G.R. to write a complaint letter" said Counsel.

3. Severity of the Alleged Noise is not Unreasonable

Counsel argued that given the Landlord's burden of proof in this matter, he must establish there is frequent and ongoing interference with other tenants' right to quiet enjoyment of the residential property. Counsel pointed to the complaint letters and said that the Landlord's testimony exaggerates the nature of the letters. She said that S.C. is responsible for all but one complaint. Further, she said S.C. described himself to the Tenant as having an "exaggerated startle response", as noted in the Tenant's letter to the building manager and Landlord, dated November 6, 2017. Counsel suggested that rather than the noise from the Tenant's unit being unreasonable, that S.C. is a sensitive tenant.

Further, Counsel noted that S.C. always points to the boy as "banging, jumping, clamouring, or in one incident (when his mother was vacuuming), playing with a top." She added that S.C.'s main concern in his complaint letters seems to be about the light fixture or asking to be moved to another suite. The Landlord said that S.C.'s light fixture was changed in mid-October 2019.

Counsel said that the complaints involve noise that would be objectively seen as reasonable in a wood frame building, which the residential property is. She said the noise is not unreasonable or substantial. Counsel said there is nothing about the noise being screaming or yelling or loud play or toys being dropped or thrown. She said the noise is reasonable in this type of building and happens occasionally. She argued that S.C. is acting unreasonably, expecting mere silence from the child above him.

Counsel said it should be noted that after the complaints, the Landlord gave her warnings, which led the Tenant to change her and her son's behaviour. Counsel said that the Tenant even removed her bedframe and put her mattress on the floor. She has no guests over, because does not want to make too much noise. She advised S.C. of their schedule, and that she and the child are out of the unit at some point seven days a week. Counsel said that the Tenant's efforts to manage the noise are more than reasonable. Counsel suggested that "it doesn't appear that the Landlord has done much to accommodate S.C. or the Tenant, but he moved directly to evicting her."

The Landlord said: "The Tenant isn't being evicted because of the child." He agreed that S.C. might be sensitive. He mentioned that there was also a complaint from G.R.:

...who hates to complain. It's not reasonable that he is being disturbed at 4 or 5 or 6 in the morning – it's not reasonable. The comments in his letter are not attributed to a child. There could be anger issues, we don't know what the sounds are. [The Tenant] could be throwing things. It continued into September and October. They keep complaining. With all these complaints what do we do? The problem is the upper unit. New tenants coming in below will be complaining again [if S.C. is moved to another suite].

The Landlord said the Tenant said: "I would not wish another tenant to experience this noise.' She, herself, said this. After the complaints and all the warnings, I have no choice but stop this by issuing an eviction notice." The Tenant said that the Landlord misinterpreted her statement and that she had said: "I would not wish another tenant to experience this." The Tenant said that she was referring to the complaints she receives from S.C.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 28 of the Act sets out tenants' right to quiet enjoyment of residential premises.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

...

(b) freedom from unreasonable disturbance;

Policy Guideline #6 helps clarify and interpret section 28, stating:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

[emphasis added]

I have considered that there was a complaint in 2017, and not one again until 2019. I have considered the Tenant's efforts to respond to the complaints by modifying her behaviour and that of her son. I have considered character reference letters that support the Tenant's efforts to manage the noise level from her unit. I have considered the possibility of the noise from both complainants being attributable to other sources, especially since the rental unit was empty for most of the summer of 2019. I have considered S.C.'s sensitivity and his focus on the child being the source of the noise.

I have considered all the evidence before me, overall and I find that the Landlord has not provided sufficient evidence that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find that the Tenant is not responsible for frequent and ongoing interference with other tenants' right to quiet enjoyment of their residential premises, nor has she caused unreasonable disturbances. I find that the Landlord has provided insufficient evidence to support the One Month Notice. I, therefore, cancel the One Month Notice; it is of no force or effect. The Landlord is not granted an order of possession. I find the tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice. The

Landlord did not provide sufficient evidence to support the validity of the One Month Notice. The One Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 21, 2019

Residential Tenancy Branch