



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC FFL CNC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;

SF and ST, agents for the landlord, (“landlord”) represented the landlord in this hearing. The tenant attended with his advocate NM. Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice, which was posted on his door on July 28, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice deemed served on July 31, 2020, 3 days after posting.

Issues

Should the landlord’s 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on September 1, 2017, with monthly rent currently set at \$982.00, payable on the first of each month. The landlord currently holds a security deposit of \$467.50. The tenant continues to reside in the rental suite.

The landlord served the notice to end tenancy providing the following grounds:

1. 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
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The landlord provided the following reasons for why they are seeking the end of this tenancy. The landlord testified that the tenant had significantly interfered with the tenants and staff at the housing complex by failing to address numerous complaints about the level of noise from the tenant's rental unit, specifically the volume of the tenant's music playing from inside his unit.

The landlord's agents provided documentation to support the numerous warning letters sent to the tenant before the issuance of the 1 Month Notice. The landlord's agents testified that the noise complaints date back to the beginning of the tenancy, but in support of the landlord's application, they had only submitted the most recent complaints, mainly from one tenant, and several staff members who work in the office located in the building. The landlord testified that several complaints had been made by previous tenants who have passed away, and therefore are unable to testify to the level of noise. The landlord also submitted multiple videos to demonstrate that the music could be heard from the ground level outside the building.

In the landlord's evidentiary materials, the landlord documented a complaint from a tenant that the tenant had his music playing extremely loudly around 6:00 p.m. The tenant was palliative, and the disturbance to this tenant was significant. The landlord followed up by calling the tenant, who said he would address the complaint. The landlord testified that the next day a staff member observed the music playing an excessive level around 10:30 a.m. The landlord followed up with a warning letter dated March 16, 2020. The tenant was sent a second warning letter on May 7, 2020 as the landlord observed the tenant to be non-compliant with the first letter.

On May 14, 2020 around 12:30 p.m. the staff observed the tenant's music to be extremely loud, which they found to be disruptive despite the fact that the office was located 3 floors below the tenant's suite. A third and final warning letter dated May 14, 2020 was sent to the tenant before the issuance of the 1 Month Notice on July 28, 2020.

The landlord's agents testified that the tenant continues to play his music an excessive level, and observed on September 17, 2020 the music could be heard down the street. The landlord's agent testified that another staff member noted the continued non-compliance on September 21, 2020.

The tenant is disputing the 1 Month Notice as the does not feel that volume of the music is excessive, or is in violation of the *Act* or tenancy agreement. The tenant provided various statements from neighbouring tenants, and also called a witness MT, who owns a business across the street. The tenant testified that these witnesses have confirmed that the volume of his music, although considered to be unacceptable to the staff and another tenant, is not excessive. Furthermore, the tenant testified that he is on good terms with his neighbours, and have adjusted the volume if necessary, and that he has not violated any noise bylaws limiting noise to the hours of 9:00 a.m. to 10:00 p.m. The tenant's witness MT testified that he has not been disturbed by the tenant, nor has he received any complaints from his clients. The landlord's agents noted that MT owned a restaurant, and that because of the noise of the restaurant, MT or clients may not have noticed the music. MT testified that he does play music inside his own restaurant.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the ground provided on the 1 Month Notice.

While the landlord provided in evidence and testimony to support that the volume of the tenant's music has disturbed other tenants and the staff, I find that the tenant had provided evidence in the form of witness statements that corroborate his belief that the volume is not excessive. In light of the conflicting testimony and evidence, the burden of proof is on the landlord to support their claims, as noted above.

Although I accept the landlord's testimony that the tenant's music may have disturbed the staff and other tenants in the building, I am not satisfied that the landlord had sufficiently demonstrated that the volume of music to be excessive, nor am I satisfied that the tenant's music has contravened any municipal bylaws.

As this is a multi-tenanted building, with multiple occupants and an office used by multiple staff, I find that the level of quiet enjoyment is impacted by the nature of the living space and construction of the building. Although I am sympathetic towards the staff and tenants, I find that the tenant had provided significant evidence supported by witness statements that support the tenant's testimony that he has enjoyed his music at an acceptable level, and within reasonable hours as set out in the municipal bylaws. In light of the conflicting testimony and evidence, I find that the landlord has failed to demonstrate that the level of disturbance is serious or significant enough for me to find that the landlord has justified the end of this tenancy on the grounds provided on the 1 Month Notice.

Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*. The landlord's entire application is dismissed without leave to reapply.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated July 28, 2020. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The landlord's application is dismissed without leave to reapply.

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: September 29, 2020

Residential Tenancy Branch