Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, CNC, LAT, LRE, OLC, FFT

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* (“*Act*”).

The landlord sought:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants sought:

- cancellation of the One Month Notice pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Landlord H.A (the landlord), Landlord B.H. (who is named on the tenancy agreement but not on the application), the landlords’ agent, Tenant B.S., Tenant C.F. and the tenants’ legal counsel all attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants’ legal counsel (Counsel) stated that they would be the primary speaker for the tenants with Tenant C.F. (the Tenant) providing testimony on behalf of the tenants.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the tenants’ Application for Dispute Resolution (Tenants’ Application) which was personally served to them on August 06, 2020. In accordance with section 89 of the Act, I find that the landlord was duly served with the Tenants’ Application.

The tenants submitted that they served their evidence to the landlord by way of registered mail on August 28, 2020. The landlord confirmed that they received the tenants’ evidence. In accordance with section 88 of the *Act*, I find the landlord was duly served with the tenants’ evidence.

The landlord testified that they served the tenants with the Landlord’s Application for Dispute Resolution (Landlord’s Application) and their evidentiary package by way of fax and by way of e-mail on September 08, 2020. The tenants confirmed that they received the evidence by way of e-mail but that they did not receive the Landlord’s Application. Although not served with the landlord’s evidence in accordance with section 88 of the *Act*, I find that the tenants are duly served with the evidence pursuant to section 71 (c), which allows an Arbitrator to find a document sufficiently served for the purposes of the *Act*.

Preliminary Matters

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I find that the tenants applied for numerous claims which are not related to the primary issue for this hearing concerning the cancellation of the One Month Notice. For this reason, the Tenants’ Application for all issues, other than to dispute the One Month Notice and to recover the filing fee, are dismissed with leave to reapply.

Rule 2.11 of the Rules states that when an Application for Dispute Resolution is made in response to an existing, related application (cross-application), the responding party must submit their cross-application as soon as possible so that the respondent to the cross-application receives it with the notice of dispute resolution and evidence not less than 14 days before the hearing. I find that the landlord should have served the tenants so that they would have received the cross-application and evidentiary package by August 31, 2020, for a hearing on September 15, 2020.

Although I find that the Landlord's Application was not served in accordance with the Rules, and the tenants attest to not having received the Landlord's Application, I find that the primary issue in the Landlord's Application is for an Order of Possession related to the same One Month Notice for which the tenants are seeking to cancel.

For the above reason, pursuant to section 62 (1) of the Act, I will consider the Landlord's Application as I find that the tenants are not prejudiced by the determination of the primary issue at hand in both applications related to the One Month Notice.

Regarding the landlord's evidence, I find that the tenants confirmed they received it as stated above and that the tenants were prepared to, and did respond, to elements of the landlord's evidence during the hearing. I further find that neither Counsel nor the tenants stated any objection to the landlord's evidence being considered. For the above reasons, I find that the tenants would not be prejudiced by the consideration of the landlord's evidence and I will consider it.

The landlord had a witness attend the hearing to provide testimony. In accordance with Rule 7.20 of the Rules, which allows an arbitrator to exclude a witness from the dispute resolution hearing until called upon to give evidence, the witness was instructed to call back into the hearing when called upon by the landlord. Approximately 20 minutes into the proceedings the landlord was instructed to invite their witness back into the hearing. Although the hearing was 57 minutes in total duration, the witness was no longer available to attend the hearing when called upon.

Rule 7.19 of the Rules establishes that parties are responsible for having their witness available for the dispute resolution hearing until excused by the arbitrator or until the dispute resolution hearing ends.

<u>Issue(s) to be Decided</u>

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

Are the tenants entitled to recover the filing fee for their application from the landlord?

Is the landlord entitled to recover the filing fee for their application from the tenants?

Background and Evidence

Both parties provided written evidence that this tenancy commenced on March 15, 2020, for a fixed term ending on August 30, 2020, with a monthly rent of $2,600.00, due on the first day of each month and a security deposit in the amount of $1,300.00.

A copy of the landlord's One Month Notice dated August 04, 2020, (originally dated July 31, 2020 which is crossed out) was entered into evidence requiring the tenants to end this tenancy by August 31, 2020. The landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security safety or physical well-being of another occupant of the residential property; or*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

In the *Details of the Event(s)* section of the One Month Notice, the landlord indicates that on July 31 (2020) they were talking with the tenant "on the phone regarding a meeting for that day which he did not cancel or attend. During the call he suddenly began to yell at me - with profanity, and kept yelling at me for over 30 minutes." The landlord states in the *Details* that the tenant threatened the landlord's safety should the landlord do anything to change the tenancy. The landlord further states that "since then I have received numerous reports from neighbours about this tenant."

The landlord also submitted into written evidence:

- A copy of an e-mail from Person K.V. to the landlord dated July 26, 2020, in which Person K.V. states that they have had to endure numerous yelling matches from the tenants' residence for months and that it was occurring again for the last half hour, at about 9:30 on the Sunday night that e-mail was written. Person K.V. states that they did not know there was a rental house near them for the past eight years until the tenants moved in and they have been subjected to hearing loud yelling matches coming from the tenants which is clearly audible in Person K.V.'s home;

- A copy of an e-mail from Person M.F. to the landlord dated August 03, 2020, in which Person M.F. indicates that the tenants live just down the driveway from them and that they have noticed the "male renter yelling' on the weekends. Person M.F. also states that there is loud "bassy" rap music over the weekends "cranked to a clearly discernible volume.";
- A copy of an e-mail from Person E.H. to the landlord dated August 03, 2020, in which Person E.H. indicates that they are a neighbour of the tenants and that "rap music with overwhelming bass" is audible in Person E.H.'s home when their kids are taking a nap. Person E.H. further states that the tenant uses inappropriate language and that Person E.H. has witnessed outrageous yelling coming from the Tenant directed towards members of his family which has made them fear for the family's safety. Person E.H. admits that they have not called the police regarding the tenant's behaviour; and
- A copy of an e-mail from an unnamed person who appears to be one of the landlord's children, which is supported by the landlord's testimony below in which she states that their son witnessed the call, who states that they witnessed the landlord attempt to make "one last" phone call to the Tenant regarding the meeting scheduled for 4:30 PM that the Tenant did not attend. The landlord's son states that the Tenant questioned the Landlord regarding the purpose of the missed meeting and threatened the landlords by using curse words, stating that they would not like who he turns into if it goes badly. The landlord's son states that the tenant indicated that they would not go for another lease and wants to go month to month until the Tenant decides to leave. The e-mail goes on to mention other incidents that occurred after the One Month Notice was issued and which are not the basis for the issuance of the notice.

The tenants submitted into written evidence:

- A copy of a witness statement from Person C.W. who states that they were at a safety meeting being conducted by the Tenant, with one additional party in attendance as well, at approximately 5:00 PM. Person C.W. indicates that the meeting was interrupted by multiple phone calls from the Landlord trying to speak with the Tenant and that the landlord was "abrasive and verbally argumentative to Clayton". Person C.W. indicated that the Landlord would not tell the Tenant the purpose of the meeting and the Tenant was trying to explain that he was in a meeting. Person C.W. stated that they began to verbally threaten the Tenant and the communication broke down between the two parties at which time Person

> C.W. stepped in to defuse the situation and make arrangements between the parties for a meeting on a future date.

The Agent submitted that there is extreme language, yelling and loud music from the tenants' rental unit on a consistent basis and referred to the e-mails submitted to support this statement. The agent indicated that extreme language from the Tenant has also been directed to the landlord.

The landlord testified that they had a call with the Tenant on July 31, 2020, which was supposed to be short in duration. The landlord submitted that she had arranged a meeting with the Tenant that day, which the Tenant did not attend, and the landlord was intending to inquire about another time to meet. The landlord stated that during the call the Tenant was yelling and swearing for a long time. The landlord testified that she felt threatened and intimidated. The landlord submitted that her son witnessed the call. The landlord testified that she has been receiving complaints about noise such as yelling and music since before the notice was served to the tenants.

Counsel submitted that the rental unit is situated on a rural property and that there are not a lot of neighbors around. Counsel questioned the Landlord's statement of numerous reports of complaints from neighbors referred to in the One Month Notice and testimony. Counsel stated that there is only one written complaint in evidence, dated July 26, 2020, which was received before the call with the Tenant about the missed meeting on July 31, 2020.

Counsel submitted that the tenants had received no warning from the Landlord regarding concerns with noise from the unit, written or otherwise, before the One Month Notice was served to them. Counsel admitted that the Tenant talks loudly at times. Counsel concluded by stating that there is no evidence of a breach of the Act related to any illegal activity at the rental unit.

The Tenant testified that he did not agree to a meeting at the time that the Landlord had indicated as both he and his wife, the co-tenant, work during the day. The Tenant reiterated that the tenants would not set that time to meet with the landlord as they pick up their kids from daycare after they are finished work. The Tenant stated that other people in the meeting could hear the Landlord over the phone when she called him during the safety meeting.

The Tenant stated that the Landlord was seeking for the tenants to sign a new lease and increase the rent. The Tenant admitted that they were agitated during the call and a safety officer he was in a meeting with at the time stepped in to defuse the situation. The Tenant stated that a new meeting time was arranged between the two parties for the following day. The Tenant apologized if they were found to be loud or rude but that there were no threats made to the landlord other than legal action. The Tenant submitted that the length of the call was only 21 minutes.

The Tenant submitted that they don't understand how they have complaints for noise at night or how they are waking anyone up as the tenants have two children who are in bed in the early evening around 8:00 PM. The Tenant testified that there is no excessive swearing coming from the rental unit due to their children being present at all times. The Tenant questioned the credibility of Person E.H. as a witness as they are the child of Landlord B.H. The Tenant stated that he does not know Person M.F. or where they are in relation to his unit.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. This section 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. If a tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the tenants acknowledged receipt of the One Month Notice, I find that the tenants were duly served with the notice on August 04, 2020, pursuant to section 88 of the *Act*. As the tenants disputed the One Month Notice on August 06, 2020, two days after receiving it, I find that the tenants have applied to dispute this notice within the time frame provided by section 47 of the *Act*.

For the above reasons I find that the landlord bears the burden of demonstrating, on a balance of probabilities, 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.

I further find that the landlord bears the burden of proof to demonstrate that the tenants have engaged in illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property or that they have jeopardized a lawful right or interest of another occupant or the landlord.

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.

Having reviewed all documentary evidence and affirmed testimony, I find that the landlord has not provided sufficient evidence that the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Although there are slightly differing accounts regarding the phone call (the Call) which took place at approximately 5:00 PM on July 31, 2020, I find that the Tenant did not significantly interfere with or unreasonably disturb the landlord during this call. Based on the affirmed testimony, including submitted evidence, and based on a balance of probabilities, I find that the landlord and the Tenant were both agitated during the Call for different reasons and both bear responsibility for the breakdown of communication that required the Tenant's co-worker to intervene.

There is no written confirmation of any scheduled meeting between the landlord and the Tenant; however, I find that it is undisputed the landlord was expecting a meeting. Based on the evidence and testimony from both parties, I accept the Tenants' submission that the landlord attempted to call the Tenant multiple times during his work meeting, which is confirmed by the landlord's son's statement that their mom was going to try to call the Tenant "one last time".

I further find, based on the Tenant and the landlord's son's submissions, that the landlord was trying to contact the Tenant about signing a new tenancy agreement and increasing the rent. I find that the matter at hand was not urgent and that it would have been reasonable for the landlord to have left a message after the first call. Based on a balance of probabilities, I accept the Tenant's submissions that the Landlord was evasive at first about the reason for the requested meeting and when the reason for the meeting became clear, the Tenant was concerned about eviction if they did not meet to sign a new lease

I find that the multiple phone calls from the Landlord to the Tenant during the Tenant's work meeting, the evasive nature of the Landlord about the nature of the meeting at first in addition to the actual reason for the landlord wanting to meet (for the tenants to sign a new lease), all contributed to the tense nature of the Call between the two parties. Although the Tenant may have reacted poorly, based on a balance of probabilities and considering that the Tenant was in the presence of co-workers, I accept the Tenant's submission that they only threatened legal action including remedies not in accordance with the Act such as not paying rent. I find that the Tenant had the presence of mind to allow intervention, remove themselves from the Call, and agree to a meeting the next day.

Having considered the above, I find that this one phone call, in which both parties contributed and bear responsibility regarding the tense nature of the Call due to converging circumstances, does not constitute significant interference on the part of the Tenant towards the landlord. Although the landlord and the landlord’s son state that the call was over 30 minutes, I find that I prefer the Tenant’s testimony that the call was only 21 minutes in length due to the fact that the Tenant was in a meeting at the time and others were waiting. I find that the landlord could have disengaged from the conversation at any point but that they were intent on arranging a meeting, without disclosing the reason for the meeting.

I further find that the tense nature of the Call between the two parties was not unreasonable considering both the landlord’s expectations of a meeting and the communication breakdown. I find that the Tenant was not seeking to engage with the landlord for any purpose at the time of the Call and was certainly not intending to unreasonably disturb or significantly interfere with them. I find that the Tenant was merely reacting tensely (and poorly) to the Call from the landlord due to the different reasons listed above, including the landlord calling multiple times in a short period during the Tenant’s and then being evasive about the reason for requesting the meeting with the Tenant.

Having reviewed and considered the evidence and affirmed testimony, I further find that the complaints about noise coming from the tenants’ rental unit do not constitute significant interference with or unreasonable disturbance to other occupants of the residential property or the landlord. As no complainant addresses were submitted, I find that the landlord has not established that the parties who submitted complaint letters are occupants on the residential property who have been unreasonably disturbed or interfered with. I further find that the landlord has not made any submissions that they personally have been unreasonably disturbed or interfered with by any noise issues.

I find that there is a question regarding the rural nature of the rental unit with insufficient evidence concerning the proximity of the rental unit to other residences in the other area and the actual impact of the tenants’ noise on the residences nearby. I further find there is insufficient evidence regarding the extent and duration of the noise levels and that all complaints refer to the noise happening during the day or early evenings on the weekend, which is not traditionally known as quiet time as mandated by municipalities. I find that there is insufficient evidence that the noise from the rental unit occurred at unreasonable hours. I find that the nature of the noise complaints are more of a temporary discomfort rather than unreasonable disturbance or significant interference.

Prior to the Call, I find that there was only one complaint submitted to the landlord regarding the tenants' noise levels, on July 26, 2020. I further find that there is no testimony or submissions from either the landlord or the Tenant that the landlord addressed any noise issues or that this complaint was brought up during the Call at any time as a reason for the meeting. I find that it would be reasonable for the landlord to address any noise complaints directly with the tenants, preferably in writing. If the noise complaints were valid and the landlord addressed the tenants regarding the unreasonable noise, with the tenants continuing to act in the same manner, it might be considered to be an unreasonable disturbance. I find that the landlord has not demonstrated that they had addressed any noise complaints prior to issuing the One Month Notice.

I further find that the landlord only started to receive the majority of the noise complaints after they intended to issue the One Month Notice to the tenants, as shown by the original date of the One Month Notice for July 31, 2020, and that all but one of the complaint e-mails was received on August 03, 2020, the day before the One Month Notice was actually issued. Based on the above and a balance of probabilities, I find that it is probable that the landlord was soliciting for complaint letters to justify issuing the One Month Notice to the tenants and that the landlord was not unreasonably disturbed with having to deal with noise complaints.

Having reviewed all documentary evidence and affirmed testimony, I find that the landlord has not provided sufficient evidence that the tenants or a person permitted on the property by the tenants has engaged in illegal activity which has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property or that they have jeopardized a lawful right or interest of another occupant or the landlord.

Residential Tenancy Policy Guideline #32 regarding *Illegal Activities* states:

> *The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of*

> *the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*

I find that the landlord has not submitted sufficient evidence that that the tenants have engaged in any illegal activity. I find that the primary complaints about the tenants are in relation to the Call that took place in which the landlord stated that they felt threatened, and the noise complaints coming from the rental unit for yelling/loud music.

Regarding the Call, I find that there is no evidence submitted that the Tenant was charged with any violation of either federal, provincial or municipal law as a result of the tense exchange. I find that the landlord has not sufficiently demonstrated that there was any threat other than remedies not in accordance with the Act and legal action. Although the Tenant may have been volatile during the Call, and I accept that the landlord may have been upset after the Call, I find that the landlord was eager to meet with the Tenant the next day due to the fact that they remained on the Call to eventually talk with the Tenant's co-worker and arrange a meeting. I find that, based on a balance of probabilities that the landlord would not have been insistent on having a meeting if they feared for their safety as a result of the Call.

Regarding the noise complaints, I find that the landlord did not provide sufficient evidence that the tenants violated any municipal by-laws. I find there is one report of yelling which occurred on or about 9:30 PM on evening. I find that the landlord has not submitted a copy of the relevant municipal by-laws to demonstrate that the tenants were in violation of any by-law due to the yelling at 9:30 PM from the tenants' unit.

After having reviewed all documentary evidence and affirmed testimony I find that, based on a balance of probabilities and the above, the landlord has insufficient cause to grounds to issue the One Month Notice and to end this tenancy for cause.

For the above reasons the One Month Notice is set aside, and this tenancy continues until it is ended in accordance with the *Act*.

As the tenants have been successful in their application, I allow them to recover their filing fee from the landlord.

As the landlord has not been successful in their application, I dismiss their request to recover the filing fee from the tenants, without leave to reapply.

Conclusion

The tenants are successful in their Application.

The One Month Notice dated August 04, 2020, is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act,* I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of $100.00, to recover the filing fee for this application.

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: October 01, 2020

Residential Tenancy Branch