



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

BM attended as agent for the landlord. The tenant attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Preliminary Matter

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties entered into a monthly tenancy agreement in May 2000, 20 years ago. Monthly rent payable on the first of the month is now \$1,722.00. At the beginning of the tenancy, the tenant submitted a security deposit of \$600.00 which the landlord holds. A copy of the tenancy agreement was submitted.

The tenant stated that the unit is a basement suite occupied by the tenant, her spouse, and two daughters, one of whom is in university. The younger daughter attends her final year in high school at a nearby school. There is a suite upstairs which was occupied by the landlord at one time and subsequently by various other tenants.

The tenant requested that the landlord's Two Month Notice be cancelled, and that the landlord be ordered to comply with the Act by providing the tenant with quiet enjoyment of her unit.

Each claim is considered in turn.

Two Month Notice

In December 2019, new occupants moved in ("the upstairs tenants"). The tenant stated that problems with noise arose shortly after. The tenant testified as follows:

1. The upstairs tenants frequently had loud music and guests until the small hours of the morning;
2. Sometimes, the music played loudly all night until 6AM or 8AM the following morning, a period of 12 or more hours;
3. The tenant complained to the landlord many times by text, email and letter about noise made by the upstairs tenants; copies of this considerable correspondence was submitted;
4. The tenant on occasion complained directly to the upstairs tenants; in one instance, she went to their apartment after 2 AM to ask if they would turn the music down and the music was turned louder in response;
5. The landlord threatened to evict the tenant if she complained any more about noise;
6. From the time the upstairs tenants moved in, the tenant called the police four times to complain about noise which had no effect on the noise made by the upstairs tenants; sometimes the police were busy and unable to respond to the complaints;
7. Neighbours complained to the tenant and the landlord about the noise caused by the upstairs tenants; copies of emails and texts were submitted as evidence;
8. The tenant stated that the family's sleep was broken many nights, and this was distressing and upsetting for them as they all worked or went to school;
9. On August 4, 2020 there was a gathering with loud prolonged noise in the upstairs apartment;
10. On August 5, 2020, the tenant sent the landlord a formal letter of complaint by registered mail, a copy of which was submitted; the letter stated in part as follows:

This is a formal request for you to comply with the Residential Act, Regulation, or term of our tenancy agreement.

A landlord must provide quiet enjoyment to all tenants. Upon receiving a disturbance complaint from a tenant the landlord is required to take steps to address the problem:

- Talk to the disruptive tenants about the problem
- **Let the tenant who complained know what's being done to address the issue**
- Follow up with the disruptive tenant in writing (e.g. a "breach letter") to explain
 - o The details of the problem
 - o The reasonable amount of time allotted to resolve the problem
 - o What may happen if the tenant doesn't fix the problem (e.g. serve notice to end tenancy)

The Residential Tenancy Act states:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I am hoping that we can resolve the above issue on or before Aug. 15, 2020. If the problem continues by the specified date, I may file an application for dispute through the Residential Tenancy Branch requesting an order for you to comply.

Please visit the Residential Tenancy Branch website at www.gov.bc.ca/landlordtenant or contact the Residential Tenancy Branch at 1-800-665-8779 for more information.

11. The landlord received the registered mail on August 7, 2020;
12. On August 8, 2020, the landlord issued a Two Month Notice stating that a member of his immediate family intended to move in to the unit and requesting that the tenant vacate by October 31, 2020;
13. The tenant believed the issuance of the Notice was in retaliation for her complaints about noise, particularly the formal letter of complaint sent by registered mail.

The landlord acknowledged that he had received noise complaints from the tenant and the neighbours about the upstairs tenants. He acknowledged receiving the tenant's formal letter of complaint dated August 5, 2020 on August 7, 2020 and issuing the Notice a day later.

The landlord denied threatening the tenant with eviction or issuing the Notice in retaliation for the complaints or tenant's formal letter of complaint.

The landlord stated that he issued the Notice because his 21-year old daughter intended to live in the unit as it was closer to her work. He asserted that he had intended for many years to have his children eventually live in the building. The landlord explained that his daughter had given her notice in her present accommodation and he needed the tenant to vacate the rental unit so she could move in. The only documentary evidence the landlord submitted in support of this testimony was a copy of a certificate of identification for the daughter.

The tenant claimed that the landlord's issuance of the Notice was retaliatory for the above-mentioned complaints.

The landlord denied the tenant's assertions and requested an Order of Possession.

Request for Order that the Landlord Comply with the Act and Provide Quiet Enjoyment

For the reasons outlined above, the tenant testified that her family is seriously disturbed by ongoing noise from the upstairs unit and the landlord has failed to assure them quiet enjoyment as required by the Act since December 2019.

In reply, the landlord testified that, as the house is old and has little sound-proofing, there is nothing he can do structurally to reduce the noise. He also asserted that he has been to the upstairs apartment many times and has never heard unreasonable noise. The landlord stated he warned the upstairs tenants about noise and requested that noise stop at 11:00 PM. The landlord acknowledged complaints from the neighbours and police attendance on several occasions but maintained there was nothing he could do about the situation beyond what he had already done. The landlord stated he has not issued the upstairs tenants a notice to vacate and has no plans to do so.

Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision. The hearing last 65 minutes and included considerable conflicting testimony.

Credibility

I have considered the evidence and testimony. I found the tenant believable, sincere and forthright. Her narrative accords with the submitted evidence. Where her version of events differs from the landlord's, I accept the tenant's version as the more reliable as she lived in the unit and experienced the noise first hand. I give most weight to her testimony which was supported in all material respects by submitted evidence.

Two Month Notice

A landlord can serve a tenant with a Two Month Notice to End Tenancy when the landlord plans, in good faith, to use the property. The landlord's use of property applies in a situation when the landlord is going to move in or have a close family member live in the rental unit.

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.

However, where a tenant has applied to cancel a Notice within the 15-day period after service, Rule 7.18 of the *Residential Tenancy Branch Rules of Procedure* requires the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

Residential Tenancy Branch Policy Guideline # 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose.

When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the

landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has some basis. The timing of the Notice served on August 8, 2020 so promptly after the tenant's letter of complaint sent by registered mail on August 5, 2020 and received August 7, 2020, raises some natural doubts about the bona fide intentions of the landlord. While the landlord provided some explanations about the reason for issuing the Notice and how the rental unit was needed by him and his daughter, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

I find, based on the testimony of the parties, that there have been several difficult interactions between the parties, and they have an acrimonious relationship. The parties both testified that the tenant has made numerous requests about noise which is well illustrated in the materials submitted by the tenant.

I find that while the landlord may intend to use the rental unit for the purposes stated on the Notice, there may be additional reasons which fueled the issuance of the Notice. Therefore, I find that the good faith argument has some merit as I find that there are reasonable doubts about the intention of the landlord to end this tenancy.

Therefore, the Two Month Notice is cancelled. This tenancy will continue until it is ended in accordance with the Act.

Order that the Landlord Comply with the Act and Provide Quiet Enjoyment

Section 62 grants authority to make any order necessary to give effect to the rights, obligations and prohibitions under the Act. The section states in part:

Director's authority respecting dispute resolution proceedings

62(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

As part of the tenancy agreement, tenants have a right to peace, quiet and privacy in

their homes – a right that comes from the common law principle of quiet enjoyment.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

[emphasis added]

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* which states as follows:

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.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

...

A breach of the entitlement to quiet enjoyment may form the basis for a claim for

compensation for damage or loss under section 67 of the RTA (Policy Guideline # 16).

However, the tenant is not making a claim in this hearing for damages. The tenant explained her present claim is for an order that the landlord provide quiet enjoyment from this time onward. She requested that the landlord be ordered to assure that she and her family have quiet enjoyment so that they may go about their work and school without unreasonable disturbance from noise. The tenant explained her daughter is in her last year of high school and the family considers it important to reside in the unit for the time being.

I accept that the unreasonable and ongoing disturbance from noise has gone on since December 2019 and is caused by the upstairs tenants. I find the tenant's version of events credible and accept her testimony that the noise resulted in loss of peace, quiet and privacy. I find the tenant has a genuine and well-founded concern that her loss of quiet enjoyment will continue.

As acknowledged, I find the landlord was aware of the interference or unreasonable disturbance. I find that the tenant clearly, consistently and repeatedly complained to the landlord about the upstairs tenants. The tenant lived in the building and provided the landlord with believable evidence and first-hand reporting

Once a landlord is aware of the interference or unreasonable disturbance, the landlord has responsibilities to take steps to fix the problem. The landlord may speak to the disruptive tenant, provide a notice in writing of the breach, set out details, a reasonable time to resolve the problem, and consequences of failure to adequately respond.

I find that the landlord's efforts were inadequate, ineffective and unreasonable given the circumstances and the landlord's obligations. I find the landlord's actions were futile in restoring the tenant's right to quiet enjoyment.

I therefore find the tenant has met the burden of proof on a balance of probabilities that she and her family have experienced loss of quiet enjoyment since December 2019, that the landlord was aware of the disturbance, has not taken adequate steps to resolve the problem, and that the issue is ongoing.

I accordingly order that the landlord immediately provide the tenant with quiet enjoyment of her unit pursuant to section 22. The tenant may apply for damages or compensation pursuant to section 67 of the Act.

Filing Fee

As the tenant has been successful in her application, I award the tenant reimbursement of the filing fee of \$100.00 which I direct the tenant may withhold from rent on a one-time basis only.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use is cancelled and of no effect. The tenancy shall continue until it is ended in accordance with the Act.

I order that the landlord immediately provide the tenant with quiet enjoyment of her unit pursuant to section 22 of the Act and the tenancy agreement.

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 06, 2020

Residential Tenancy Branch