Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT
OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (Tenants' Application) and an Amendment to the Application (Amendment) that were filed by the Tenants on September 26, 2022, and January 16, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice);
- Compensation for monetary loss or other money owed;
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

This hearing also dealt with a Cross-Application for Dispute Resolution filed by the Landlords (Landlords' Application) on October 24, 2022, under the Act seeking:

- An order of possession based on the One Month Notice; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on February 10, 2023, and was attended by the Tenants, three witnesses for the Tenants, and the Landlord S.S. All testimony provided was affirmed. As the parties acknowledged service of the Notices of Dispute Resolution Proceedings (NODRP's) and Amendment, and stated that there are no concerns regarding the service dates or methods, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

In their Application the Tenants sought remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end as a result of the One Month Notice. As I find that the claims for compensation for monetary loss or other money owed and an order for the Landlord to comply with the Act, regulations, or tenancy agreement are not sufficiently related to validity or enforceability of the One Month Notice, I exercise my discretion to dismiss them with leave to reapply.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of a One Month Notice?

If not, are the Landlords entitled to an Order of Possession?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the rental unit is located in a single-family home with two rental units, that the Tenants reside in the upper unit, and that another tenant resides in the lower rental unit under a separate tenancy agreement.

The Landlord stated that they resided in the upper unit of the home while renting out the lower unit between 2004-2009 without any noise issues. The Landlord stated that as soon as the new tenant moved into the lower rental unit on October 15, 2021, they immediately began receiving complaints from them about the Tenants. The types of complaints described included but were not limited to noise, the use of the shared laundry facilities, and the Tenants' use and treatment of garbage and recycling bins. The Landlord stated that the police have been called as a result and that the tenant of the lower rental unit has given notice to end their tenancy as a result.

The Landlord stated that despite several attempts at mediation between the tenants of the upper and lower units, the issues have persisted, and characterized the Tenants as uncooperative, noisy, aggressive and overstepping. The Landlord also stated that there was a physical altercation necessitating police involvement and an altercation between the Tenants and the owners of a neighbouring property regarding a fence. As a result, they stated that they were forced to issue the One Month Notice.

The One Month Notice in the documentary evidence before me was signed and dated September 27, 2022, has an effective date of October 31, 2022, and states that the notice has been served 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. The Landlord stated that it was placed in their mailbox and sent via email on September 27, 2022, and the Tenants confirmed receipt on that date.

The Tenants argued that they are not unreasonably disturbing or significantly interfering with the tenant of the lower unit and in fact, it is the reverse. The Tenants stated that the complaints against them are unfounded, that the tenant of the lower unit seems to expect silence at all times, and that they are simply using the rental unit reasonably for normal daily living activities. The Tenants stated that 80% of the complaints made by the tenant of the lower unit are before quiet hours and that the allegations of violence are both unfounded and unsupported. The Tenants suggested that issuance of the One Month Notice may be related to a previous attempt to unlawfully increase the rent in an

effort not to have to sell the home, as they allege the “complaints” against them began shortly thereafter. They also stated that the “altercation” with the owner of the neighbouring property was a misunderstanding due to a language barrier, as they mistakenly believed that the tenants were attempting to take down a fence that had actually blown down during a wind storm.

The Tenants stated that the accusations against them are overblown and that they constantly live in fear of being evicted from the rental unit for simply living in it. The Tenants called three witnesses, including the former occupant of the lower unit who lived below the Tenants, all of whom stated that the home lacks proper soundproofing and that in their experience, the Tenants are simply engaging in normal daily living activities at reasonable times of the day.

A significant amount of documentary evidence was submitted by the parties for my consideration including but not limited to audio and video recordings, copies of email and text correspondence, police reports, photographs, and written submissions.

Analysis

There is clearly an acrimonious relationship between the occupants of the upper and lower rental units, with each alleging safety concerns and significant interference and disturbance by the other. Although the Landlord argued that they “without a doubt” have satisfied the terms for eviction via the One Month Notice, I disagree for the following reasons.

I find that any altercation that may or may not have occurred between the Tenants and the owner of a neighbouring property regarding a fence is immaterial to validity of the One Month Notice issued pursuant to section 47(1)(d)(i) of the Act as the owner of the neighbouring property is neither the Landlord nor another occupant of the rental unit or rental property. As a result, I have not considered this altercation, if it occurred, as a ground for ending the tenancy.

The Tenants argued that the real issue is the lack of soundproofing between the units, as they are located in a single-family home that was not built or designed to be used in this manner, and the unreasonable expectation by the occupant of the lower rental unit that they are entitled to silence or near silence. For the following reasons, I agree. First, the Landlord acknowledged at the hearing that the occupant of the lower rental unit is sometimes” too picky” when it comes to expectations related to the tenancy. Second,

the Tenants called three witnesses, including the former occupant of the lower rental unit, all of whom stated that the Tenants do not make more noise than what would reasonably be expected for a family with a young child going about their regular daily living activities during normal and reasonable hours. The former occupant of the lower rental unit acknowledged that there was little to no soundproofing and that even normal conversational speech could easily be heard between the units. However, the former occupant stated that despite this fact, they were never unreasonably disturbed by the Tenants or their children. The other two witnesses also gave affirmed testimony that they were present in the rental unit on several occasions when the current occupant of the lower rental unit behaved aggressively and unreasonably towards the Tenants regarding “noise complaints” when there was not only no unreasonable or excessive noise occurring, but very little noise or activity in the rental unit at all.

As the Tenants’ witnesses appeared at the hearing and provided affirmed testimony subject to cross-examination, I afford it more weight than the written complaints of the occupant of the lower unit and their witness. As the witnesses were not present during the proceedings except when providing their own witness testimony, and all called into the hearing from separate locations and phone numbers, I am also persuaded by the level of internal and external consistency of their testimony.

I appreciate that everyone’s tolerance to noise is different but having read the email complaints submitted from the lower occupant, I find much of what the lower occupant is complaining about to be the regular every-day noises expected in multi-unit dwellings, especially multi-unit dwellings with children, such as some running, the movement of furniture, the sounds of footsteps and toys, and that the complaints often relate to noise being made during reasonable hours, such as 7:00 AM – 10:30 P.M. I also note that much of the types of evidence I would normally expect to see from or on behalf of a complainant when there are allegations of repeated unreasonable noise disturbances, such as audio and video recordings of these disturbances, are absent. Further to this, the Tenants have submitted numerous audio and video recordings showing not only loud noise disturbances coming from the lower unit, but concerning and unreasonable behaviour towards the Tenants on the part of the lower occupant.

Although I have read an considered the Landlord’s 17 point summary document, I find that the Landlord has not submitted sufficient documentary or other evidence to satisfy me on a balance of probabilities that many of the allegations made therein against the Tenants, such as frequent disrespectful conduct towards other residents, the use of offensive language and gestures, violent and intimidating behaviour, has occurred.

Several police reports were also submitted indicating that no criminal offenses were occurring and police action was not taken, and I find that a video taken by the Tenants of an incident covered by one of the police reports demonstrates to my satisfaction that the incident was not as characterized by the occupant of the lower rental unit in the phone call to the police.

Based on the above, I therefore find that the Landlord has not satisfied me on a balance of probabilities that they have grounds to end the tenancy under section 47(1)(d)(i) of the Act. I therefore dismiss the Landlords' Application seeking enforcement of the One Month Notice and I grant the Tenants' Application seeking its cancellation.

Pursuant to section 72(1) of the Act, I grant the Tenants recovery of their $100.00 filing fee as they were successful in their Application. Pursuant to section 72(2)(a) of the Act, the Tenants are permitted to deduct $100.00 from the next months rent payable under the tenancy agreement in recovery of this amount. As the landlords were unsuccessful in their Application, I decline to grant them recovery of their $100.00 filing fee.

Conclusion

I grant the Tenants' Application seeking cancellation of the One Month Notice and order that it is cancelled and of no force or affect. I also grant the Tenants authorization to withhold $100.00 from the next months rent for recovery of their filing fee.

The Landlords' Application is dismissed in its entirety 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 Act.

Dated: March 10, 2023

Residential Tenancy Branch