



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties each confirmed receipt of the other’s evidence and that they were prepared to proceed.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the compliance claim is not related to the matter of whether the tenancy will end, I dismiss the claim with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy of an upper unit in a house started on December 1, 2012. Rent of \$1,283.00 is payable on the first day of each

month. At the outset of the tenancy the Landlord collected a security deposit of \$550.00. The Landlord gave the Tenant a one month notice to end tenancy for cause dated December 5, 2022 (the "Notice"). The reasons stated on the Notice is that a person or person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Notice sets out details of disturbances by the Tenant's roommates or guests.

The Landlord states that three neighbours, that do not reside on the rental property but are adjacent or near to the rental property, have complained that between August 23 and November 24, 2022 the Tenant's guests or roommates have caused a disturbance on several occasions by loud music in the middle of the day, noise to midnight and smoking. These neighbours also complained about cars being parked on an access road that have blocked the neighbours' cars and a dog being off leash. The Landlord states that the neighbours were informed that they should call the police or bylaw officers with their concerns however the Landlord does not believe or know that these neighbours made any such calls.

The Landlord states that the tenant occupying the lower unit in the house complained on November 2, 2022 that other neighbours were complaining to this tenant about the disturbances from the Tenant's unit and guests or roommates. The Landlord states that the lower tenant also sent a note on November 15, 2022 about the number of people coming and going from the unit and about the parking. The Landlord states that this tenant does not indicate how often the issues or complaints were being made and does not set out any affect on the lower tenant by the issues or complaints.

The Tenatn states that the Landlord's evidence containing the emails of November 2 and 15, 2022 do not include the name of the lower tenant as the name was blocked out and that they were not aware that the lower tenant sent these emails. The Tenant states that the lower tenant provided a witness letter dated March 30, 2023 wherein the lower tenant stated that they have no complaints about the Tenant. The Tenant states

that the lower unit does not have any car to park. The Tenant points out that the complaints by the neighbours who do not occupy the house are bylaw issues and not a matter that is under the jurisdiction of the Act.

The Landlord argues that the tenancy agreement requires that the Tenant not disturb the adjacent neighbours.

Analysis

Section 47(1)(d)(i) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The evidence of neighbours who are not occupants of the unit or rental property is not evidence that I may consider as the above section of the Act only relates to other occupants or the landlord. Further the complaints by the neighbours are bylaw related and not relevant to the reason for the Notice. While the tenancy agreement contains a section in relation to disturbing adjacent neighbours, this is not a basis under the Act to evict the tenant for such a disturbance. This is a term of the tenancy agreement, the Landlord is not seeking to end the tenancy for a breach of a material terms and this term does not appear to be a material term in any event.

The only complaint by another occupant of disturbance by the Tenant or the Tenant's guests or roommates is from the lower tenant and given this tenant's letter dated March 30, 2023 that it has not complained about the Tenant, I find on a balance of probabilities that the Landlord has not substantiated that this tenant was unreasonably disturbed or significantly interfered with. For the above reasons I find that the Landlord has not substantiated that the Notice is valid for its reason and that the Tenant is therefore entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with its claim, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rents payable.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: April 24, 2023

Residential Tenancy Branch