

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenant filed their application on July 31st, 2023, and seeks the following:

- Cancellation of the Landlord’s One Month Notice to End Tenancy for cause (the “Notice”); and
- Authorization to recover their filing fee from the Landlord.

The Landlord filed their application on August 9th, 2023, and seeks the following:

- An order of possession based on the Notice; and
- Authorization to recover their filing fee from the Tenants.

The Tenants acknowledged that they did not “formally” serve the Landlord with their application and evidence, but instead emailed the Landlord one week prior to the hearing. The Landlord confirmed receipt of the Tenants’ email and acknowledged that they have reviewed the Tenants’ evidence. The Tenants acknowledged receipt of the Landlord’s application and evidence via registered mail.

Background and Evidence

The tenancy began on December 1st, 2022, pursuant to a signed tenancy agreement that was later amended to correct a spelling mistake (the “Agreement”). Pursuant to the Agreement, it is the Tenants’ responsibility to “maintain [the] lawn and garden” and the Tenants are provided with “carport & driveway” parking. The Agreement lists the Tenants and their three minor children as tenants.

The Landlord testified that they issued the Notice, which was served to the Tenants on July 25th, 2023, for repeated noise complaints from the Tenants’ downstairs neighbour (the “Neighbour”), and for prior incidents between the Landlord and the Tenants which put the Landlord’s property at significant risk. The Neighbour has a separate tenancy agreement with the Landlord.

Noise

The Landlord testified that the previous tenants in the lower level of the residential property ended their tenancy because of excessive noise originating from the Rental Unit. The Landlord now receives “constant” complaints from the Neighbour, who has been renting the lower-level unit since in or about July 2023.

The Landlord submitted copies of text messages, as well as emails, between themselves and the Tenants, as well as copies of text messages between the Neighbour and the Tenants. In their communication with the Tenants, the Neighbour complains about the Tenants' kids jumping or pulling chairs in the kitchen, causing the Neighbour to wake up from sleep in both mornings and the afternoons.

The Tenants testified that they have three young children, all under seven years old, and any noise emanating from the Rental Unit is normal for children of this age. The Tenants further testified that, on at least one occasion, the Neighbour complained in the afternoon about noise not allowing them to sleep. The Tenants were informed by the Neighbour that the Neighbour's work schedule is irregular and consequently they could be sleeping at any time of the day.

The Flooding Incident

The parties agreed that in or about June or July 2023, the Tenants or their guests caused water to overflow from the Rental Unit's kitchen sink onto the kitchen floor, causing a minor incident that the Landlord was forced to remedy (the "Flooding Incident"). The volume of water was not significant, but it was enough to cause cosmetic damage to the ceiling of the unit below.

The Landlord testified that the Tenants failed to notify the Landlord of the Flooding Incident, which caused cosmetic damages to the ceiling of the lower-level unit.

The tenant S.N. testified that they had not noticed any water on the kitchen floor, because it was their mother who was washing dishes and not them and apologized for the incident.

The parties agreed that the Flooding Incident did not cause any long-term problems and the cosmetic issues were promptly remedied by the Landlord. There have been no other similar incidents since.

Other Incidents

The Landlord testified that the Tenants treat the backyard and driveway of the residential property in which the Rental Unit is in as their own personal yard and driveway, which has caused issues with the Neighbour and with the Landlord. In or about July 2023, the Landlord was unable to adequately market the lower level of the residential property to potential tenants because the Tenants failed to move their vehicle from the driveway on the date of the showings, despite prior requests from the Landlord. While visitors had access to the residential property, the Tenants' vehicles made the property less presentable. Also, the Tenants have in the past blocked the Neighbour from accessing the backyard, which they do not maintain in accordance with the Agreement.

The Landlord also complained of the debris left in the backyard and referred me to pictures showing a pile of tree branches and trimmings in the backyard.

The Tenants testified that at the time of executing the Agreement, they were verbally informed by one of the Landlord's agents that they had exclusive access to the driveway and the backyard, but that they have been willing to share with the Neighbour and will continue to share both the driveway and the backyard.

The tenant S.N. acknowledged blocking the only door to the backyard on one occasion to protect their infant daughter from "getting splinters" from the wooden door, and they informed the Landlord of this in an email.

Analysis

The Landlord has selected the following grounds for the Notice:

- The Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.
- The Tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- The Tenants have put the landlord's property at significant risk.

A review of the above provisions indicates that the Tenants must have engaged in serious misconduct that seriously affected Landlord's property or the health or safety or lawful right of the Neighbour or the Landlord. Regarding noise and access to the yard, the Tenants' conduct must be significantly interfering with or unreasonably disturbing other occupants or the Landlord.

The Flooding Incident and cleanliness

Based on the evidence before me and the testimony of the parties, I cannot find that the Tenants have put the Landlord's property at significant risk, nor have the Tenants seriously jeopardized the health or safety or lawful right of another occupant or the Landlord. The parties agreed that the Flooding Incident was a one-time occurrence that was resolved upon its discovery. I accept the Tenants' testimony that they were unaware of water seeping to the ceiling of the unit below them. The parties indicated that the Rental Unit itself was not damaged and it is more likely than not that the Tenants were unaware of the leak to the unit below. In the alternative, even if I am wrong about the Tenants' awareness, the minor cosmetic damage caused was the result of a one-time accident which did not put the Landlord's property at significant risk, nor did it seriously jeopardize the health or safety of anyone.

The Agreement indicates that maintenance of the backyard, including maintenance of the lawn and garden are the responsibilities of the Tenants. However, after reviewing the evidence submitted by the parties, I find the backyard to be sufficiently clean for the

purposes of sections 32 and 47 of the *Act*. The piles of yard trimmings are neither putting the Landlord's property at significant risk, nor are they seriously jeopardized the health or safety or lawful right of the Neighbour or the Landlord.

Excessive noise and access

I find that the Tenants have not significantly interfered with or unreasonably disturbed the Neighbour by making excessive noise or by blocking access to the backyard. I accept S.N.'s testimony that the backyard was blocked on only one occasion for the purpose of protecting their infant daughter from splinters. It is also reasonable for three young children to jump or to pull chairs in the kitchen during regular working hours or even in the mornings. In other words, the nature of the noises being complained of by the Neighbour are noises caused by the Tenants' daily living.

Finally, I do not agree with the Landlord that the Tenants were obligated to remove their vehicles from the driveway on the day that the Landlord was marketing the lower-level unit. The residential property was accessible, and the vehicles were parked in their designated parking spots. The driveway was being used as per its intended use.

I find that the Landlord has not overcome their onus to establish cause to end the tenancy based on the Notice. Therefore, the Notice is canceled and is of no force or effect. I dismiss the Landlord's application in its entirety.

As the Tenants have been successful in their application, I award the Tenants their \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the Tenants to withhold \$100.00 from one monthly rent payment in satisfaction of this order. The Landlord may not serve the Tenant with a Ten Day Notice for Unpaid Rent if the Tenant deducts \$100.00 from their rent in satisfaction of this cost order.

Conclusion

The Notice is canceled and is of no force or effect. The tenancy continues until it is ended in accordance with the *Act*. 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: October 3, 2023

Residential Tenancy Branch