



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FF

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), and to recover the filing fee.

The tenant, the landlord, and a manager for the landlord, attended the hearing. At the start of the hearing I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties confirmed receiving evidence from the other party and having had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were served with evidence in accordance with the *Act*.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A month to month tenancy agreement began on January 1, 2011. Currently, monthly rent in the amount of \$685.00 is due on the first day of each month. The parties agreed that the tenant paid a security deposit of \$312.50 at the start of the tenancy.

The tenant confirmed that he was served on November 23, 2013 with a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated November 23, 2013 alleging one cause. The caused listed on the 1 Month Notice is 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.

The tenant disputed the 1 Month Notice on November 26, 2013, which is within 10 days of being served with the 1 Month Notice on November 23, 2013. The effective vacancy date on the 1 Month Notice is listed as December 31, 2013.

The landlord referred to document #1 in the landlord's evidence package, which is a letter dated November 20, 2013 from tenant SPC from unit 202. In the letter signed by tenant SPC, she writes in part:

"...Since moving in (January 2013), I have experienced multiple incidents in which the tenant below my suite has inappropriately and frequently put me in uncomfortable situations. ie. calling the police in regards to "noise" he could here from above, and gone as far as approaching myself in person and disturbing my privacy in the building by knocking and banging excessively on his ceiling as well as my front door. The majority of incidents, that have occurred thus far have all been before the hours of 10 pm and therefor make it an uncomfortable living situation for myself..."

[reproduced as written]

In the same letter, the tenant also writes:

"...I am entitled to the enjoyment and privacy of my own suite and feel the situation that which I have been made part of makes me feel as if i am walking on eggshells in my own home as well as nervous to any situation that may arise regarding and or involving said tenant below me.

In closing I would like to take this time to recount a specific situation in which the tenant below myself threatened and verbally abused myself enforcing his statement that if I was not "respectful" and "quiet" by his terms that he would see to it that I was evicted as he did the last tenants before myself."

[reproduced as written]

In response to this letter, the tenant stated that he only spoke to that tenant four times and asked her to "turn it down". The tenant denied any yelling between tenant SPC and himself.

The landlord referred to document #2 in the landlord's evidence package, which is an e-mail dated November 28, 2013 from a unit 202 tenant, SS. In the e-mail which includes the first name of tenant SS and the e-mail address which matches the full name of tenant SS, tenant SS writes in part:

"This is to state there were times where I felt very uncomfortable living above [first name of tenant] in unit 202. On several occasions he would bang aggressively on the ceiling during the day, when we were talking at a reasonable level. It got to the point where he would bang and yell obscenities for common noise before it was acceptable for us to be quiet. We felt we had to walk on egg shells to appease him. At one point we went downstairs to talk to him, and offer a peace offering and get some understanding for the situation, these efforts never satisfied him. He also said that he would make things difficult for [name of manager] is things didn't change..."

[reproduced as written]

In response to this e-mail, the tenant did acknowledge that tenant SS did bring down a cake as a peace offering and that he declined the cake and said "keep it down". The manager testified that in 2012, the tenant threatened her by saying he "would make life difficult for you", which the manager considered a verbal threat. The tenant denied making that comment to the manager.

The landlord referred to document #3 in the landlord's evidence package, which is a letter dated January 5, 2014 from a tenant in unit 201, TB. In the letter, which is signed by tenant TB, tenant TB writes in part:

"...This letter is in reference to a noise complaint allegedly forwarded to our landlord [name of manager], by one of the tenants in the building against Unit 202.

I would like to certify that I live next to Unit 202 and I have not had any issues with regards to loud music and other sounds coming from said apartment.

There are only four (4) units on our floor and I have never had any problems with any one of them."

[reproduced as written]

The landlord referred to document #8 in the landlord's evidence package, which is a text message exchange between the landlord and the tenant dated January 3, 2014. In the text message exchange, the landlord writes in part:

“Hi [first name of tenant]. A complaint was received about you yelling and swearing in your suite early this morning. Also you have been heard yelling when you hear someone’s cat. Please refrain from yelling and swearing.”

[reproduced as written]

In the tenant’s response, the tenant writes in part:

“Yes, if you have to know, I had to go to the washroom at 630 in the morning & walked into the door frame as I wasn’t entirely awake. I swore at the door & myself.

As for the ‘yelling at the cat’ allegation, I’m not sure how to respond to that since I don’t know anyone with a cat that’s loud enough for me to direct a ‘yell’ at. Ridiculous.”

[reproduced as written]

On a different date, the landlord stated that another occupant in the building advised the landlord that they heard the tenant yell “shut your fucking alarm off”. The tenant denies saying anything about an alarm, but did confirm using the “f-word” during that event, which was a different incident then the incident described in document #8 above.

The tenant referred to page 18 of the tenant’s evidence, which is an affirmation signed by a tenant living in unit 101, tenant RS, which indicates that tenant RS heard “loud music and stomping” at 10:30 p.m. on December 6, 2013.

The landlord wanted to clarify that issuing the 1 Month Notice on the tenant was not retribution for the tenant contacting the local city bylaw department, which was alleged by the landlord during the hearing, but was due to the tenant harassing and disturbing other tenants and the landlord, and the manager for the landlord. The landlord made a verbal request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – The 1 Month Notice is dated November 23, 2013 and has an effective vacancy date of December 31, 2013. The tenant disputed the 1 Month Notice on November 26, 2013, which is within the 10 day timeline as

provided under section 47 of the *Act*. The onus of proof is on the landlord to prove that the 1 Month Notice is valid. The landlord provided several documents which I find support the cause listed on the 1 Month Notice. The documents are written by witnesses, who are current tenants or former tenants that live near, or have lived near the tenant, and all of whom support that the tenant has been disruptive and have made them feel “uncomfortable”. The tenant confirmed during the hearing that on multiple occasions, he has approached other tenants in the building to complain about noise, versus complaining to the landlord on those occasions to have the landlord investigate and respond to his noise complaints. On at least two occasions, the tenant confirmed using the “f-word” which could be overheard by other tenants, and for which other tenants complained to the landlord.

I do not afford any weight to the tenant’s evidence from tenant RS as that evidence is in relation to noises heard by the tenant. The 1 Month Notice was issued by the landlord due to concerns related to the actions of the tenant towards other tenants and the landlord, not the actions of other tenants that were allegedly causing a concern for the tenant. Therefore, I find that tenant’s evidence referred to during the hearing to be moot in disputing the 1 Month Notice.

Based on the above, **I find** the landlord has met the burden of proof by proving that 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. The tenant should not have approached other tenants on multiple occasions in the building as that behaviour has been construed as disturbing, and I find the evidence supports that other tenants in the building have been disturbed and made to feel uncomfortable by the behaviour of the tenant. The remedy for the tenant would have been to complain about all noise concerns to the landlord, and if the landlord did not respond in a timely manner or to the satisfaction of the tenant, to seek remedy under the *Act*, not to approach other tenants and risk eviction. Given the above, **I dismiss** the tenant’s application in full, without leave to reapply. **I uphold** the landlord’s 1 Month Notice. The landlord verbally requested an order of possession during the hearing. Section 55 of the *Act* states:

Order of possession for the landlord

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) the director dismisses the tenant's application or upholds the landlord's notice.

[emphasis added]

Given the above and taking into account the landlord's oral request for an order of possession during the hearing, **I find** that the landlord is entitled to an order of possession effective **two (2) days after service on the tenant** as the effective vacancy date listed on the 1 Month Notice, December 31, 2013, has passed. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the tenant's application did not have merit, **I do not grant** the tenant the recovery of the filing fee.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 20, 2014

Residential Tenancy Branch

