



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agent (the landlord) attended the conference call hearing and gave sworn testimony. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause?

Background and Evidence

The parties agreed that this month to month tenancy started on August 01, 2012. The tenant pays a subsidized rent for this unit of \$595.00 per month. Rent is due on the 1st day of each month. The tenant paid a security deposit of \$602.50 on July 18, 2012.

The landlord testified that they have received multiple complaints from the previous tenants living below this tenant about noise from his unit. Those tenants moved out and the current tenants living in the unit below have also made numerous complaints about noise. The tenants below have had to call out the police on three occasions due to noise, twice in October, 2015 and once in November, 2015.

The landlord wrote to the tenant and informed him of the complaints and the tenant was asked to desist with the noise and disturbances. Caution letters were also sent to the tenant on November 20 and 29, 2012 and more recently in February, 2015, October, 2015 and April, 26, 2016. The landlord testified that the tenant stated the noise is from the water pipes in his unit but this has not been proven and no other complaints have been received from surrounding tenants about pipe noise. The building manager has also investigated the complaints and heard the noise from the tenant's unit. The tenant has requested to be moved to another unit but has not filled in a transfer request and an application form which is required. The tenant has always paid his rent on time and if a unit had been available he would have been considered a good candidate to have been moved. Currently there are no available units to move this tenant to.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for cause on April 26, 2016. Since serving the tenant with the hearing package the landlord has received four more complaints about noise from the tenant's unit. The landlord referred to complaint letters, the caution letters sent to the tenant and the recording provided in digital evidence of the noise heard from the tenant's unit below.

The landlord has provided a copy of the One Month Notice in documentary evidence. This Notice indicates that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord and the tenant has breached a material term of the tenancy agreement which was not corrected after written notice to do so. The Notice has an effective date of May 31, 2016.

The tenant disputed the landlord's claims. The tenant testified that he did not file an application to dispute the Notice because he has received around 10 or 15 Notices from the building manager concerning noise complaints from the tenants in the unit below but as it is a plumbing issue and not noise made by the tenant and his family he cannot prevent it. The tenant testified that he is affected by similar noise from the unit above his.

The tenant testified that he has written to the building manager several times stating that this is not his issue but is a building problem and the landlord should engage a plumber to deal with this. Any other noise is just normal living noise. This is a noisy building and tenants have to accept that. The tenant testified that he is a person with disabilities and he does not have the mentality to deal with the eviction notices he has received. Every time the tenants below make a complaint then the building manager serves the tenant with a Notice without even investigating the complaint. The downstairs tenant even called the police and reported domestic violence but this was proven to be unfounded and they were warned by the police not to make vexatious calls.

The tenant testified that he has been harassed by the building manager or area manager and has complained to the director of the company and they didn't follow up with that eviction notice. After that the tenant decided to ignore any further eviction notices and therefore did not file an application to dispute this one.

The landlord testified that they investigate all complaints that come in and the tenant has an opportunity to respond in writing some of these responses are included in the landlord's evidence package. The landlord testified that the RCMP letter provided by the tenant does state that the claim made against him for domestic dispute was false but it also states that the complaint should have been made under a noise complaint and the complainants were warned about making false complaints to the RCMP. Given the seriousness of this situation and the ongoing complaints the landlord feels they have exhausted their patience and request an Order of Possession for the end of July, 2016.

The tenant testified that if the landlord has read the tenant's submissions he will see that the tenant has been having a problem with the other supervisor of the landlords. The tenant had applied for subsidized housing and a rent reduction but that supervisor JM refused it. When the tenant complained he was then offered a unit in this building; however JM is also the supervisor for this building and on the first day they moved in he got a complaint about noise. The tenant explained to the building manager that they were moving in and must expect some noise.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The notice was served in person and therefore was deemed served on April 26, 2016. The tenant did not dispute the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

The tenant testified that the landlords frequent notices to end tenancy became things that the tenant choose to ignore; however, as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notices ending the tenancy once given.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act*. The landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee from the tenant of **\$100.00**. The landlord may retain this amount from the tenant's

security deposit leaving a balance of **\$502.50** which must both be dealt with at the end of the tenancy in accordance with s. 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on July 31, 2016**. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: July 19, 2016

Residential Tenancy Branch