



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MT CNC FF

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) under the *Residential Tenancy Act* (the “Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated September 1, 2016 (the “1 Month Notice”), for more time to make an application to cancel a notice to end tenancy, and to recover the cost of the filing fee.

The tenant and two agents for the landlord (the “agents”) attended the teleconference 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.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matters

As the tenant filed his Application within the allowable timelines provided under section 47 of the *Act*, I find the tenant’s Application for more time to make an application to cancel a notice to end tenancy to be moot and will not be considered further.

During the hearing, due to ongoing issues with the tenant’s cell phone echoing during the hearing and providing loud and distracting feedback, the tenant had to be muted. At all times the tenant could hear the testimony of the agents during the hearing while muted as muting only silenced the tenant’s cell phone noise but not the ability for the tenant to hear the agents or the undersigned arbitrator. The tenant was unmuted several times to allow him to the ability to respond to the evidence presented by the

agents. As a result, at no time was the tenant unable to hear the agents and the undersigned arbitrator.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on July 15, 2007. The tenant continues to occupy the rental unit.

The tenant confirmed that he was served on September 1, 2016 with the 1 Month Notice dated September 1, 2016 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 September 9, 2016, which is within 10 days of being served with the 1 Month Notice on September 1, 2016. The effective vacancy date on the 1 Month Notice is listed as October 31, 2016. The agents stated that the tenant paid October rent for use and occupancy. The agents confirmed they were not reinstating the tenancy and requested an order of possession effective November 30, 2016, if they are so entitled under the *Act*.

In support of the 1 Month Notice, the agents referred to several complaint letters submitted in evidence from neighbouring tenants complaining about how much noise the tenant has been causing and the negative impact that noise has had on them. The agents referred to the name of one of the tenant's neighbours that complained on multiple occasions about the noise and eventually moved out of the building citing that he required a quieter rental unit. The tenant confirmed that he received all of the various warning letters provided in writing from the landlord warning of the noise he was causing and that the building was "far from sound proof." The tenant was asked why he continued to make so much noise in the rental unit even after receiving so many written warnings. The tenant testified that he was not aware of how the noise carried through the building and impacted others.

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 September 1, 2016 and has an effective vacancy date of October 31, 2016. The tenant disputed the 1 Month Notice 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 many documents including formal written warnings to the tenant regarding noise complaints the landlord has received from other tenants in the building. The tenant confirmed receiving those letters and in at least one letter, the landlord writes that the building is “far from sound proof”. In response to all of the warning letters, the tenant stated that he was not aware that noise travelled so easily in the building which I find to be unreasonable given the previous written warnings he received which indicates that the building is “far from sound proof” and that many complaints have been received regarding noise from the tenant’s rental unit.

Based on the above, I find the landlord has provided sufficient evidence to 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 unreasonably disturbed another occupant or the landlord. At no time during the hearing did the tenant deny that he made the noises he was accused of making in the complaint letters presented in evidence.

Given the above, **I dismiss** the tenant’s application in full, without leave to reapply. **I uphold** the landlord’s 1 Month Notice. Section 55 of the *Act* applies and 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 to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[my emphasis added]

Given the above and taking into account that I have reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*, I find that the landlord is entitled to an order of possession effective **November 30, 2016 at 1:00 p.m.**

As the tenant's application did not have merit, I do not grant the tenant the recovery of the cost 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 is granted an order of possession effective November 30, 2016 at 1:00 p.m. 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: November 2, 2016

Residential Tenancy Branch