



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on June 6, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated May 31, 2017 (the "One Month Notice"); and
- other unspecified relief.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing on her own behalf and was accompanied by one witness, D.H. All parties giving testimony provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord, in person. Although neither party could recall the date it was served, the Landlord acknowledged receipt of the Application package. The Tenant also submitted a one-page letter in support of the Application, which was received at the Residential Tenancy Branch on July 24, 2017. Although served after the deadline for service of documentary set out in the Rules of Procedure, the Landlord acknowledged receipt on July 25, 2017, and did not make any submissions concerning the admissibility of the evidence. I find the Tenant's Application package and documentary evidence have been sufficiently served for the purposes of the *Act*.

The Landlord submitted documentary evidence in response to the Application. She testified it was served on the Tenant, in person, on July 18, 2017. Included with the Landlord's documentation was a Proof of Service form confirming service was witnessed by D.H. I find the Tenant was served with and received the Landlord's documentary evidence on July 18, 2017.

No further issues were raised with respect to service and receipt of the above documents. The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issue to be Determined

Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The parties agreed the tenancy began in or about April 2015. Currently, rent in the amount of \$650.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$312.50, which the Landlord holds.

The Landlord issued the One Month Notice for what she described as multiple, ongoing problems over the course of the tenancy. First, the Landlord testified she has received complaints from other tenants about noise from music and gaming emanating from the Tenant's rental unit. In support, the Landlord submitted an email complaint from T., dated April 2, 2017, in which she stated the Tenant's "music was vibrating through my place about 6:30 pm and I started to feel anxious and agitated". The email went on to describe that the music was shut off for a few hours but resumed from about 10:00 p.m. to 1:00 a.m. The tenant indicated she had to use ear plugs and sleeping pills to get to sleep. This email was followed up with another noise complaint from T., dated April 19, 2017, which stated: "[The Tenant's] base has been beating on top of my pounding headache for 2 hours now...I will be keeping my eye on other rental places as much as I like to bare and grin this constant annoyance." Further noise complaints from T., included with the Landlord's documentary evidence, were dated May 5 and 16, and June 11, 2017.

Second, the Landlord testified the Tenant made threats to another tenant. In April 2017, the Tenant said he would punch T. in the face if she knocked on his door again. In an email dated April 23, 2017, T. wrote: "After his threat to punch my face in today, I do not feel safe". The Landlord also submitted a different email from T., also dated April 23, 2017, in which she described the Tenant's "aggressive and abusive gesture and hostility toward me for asking him to shut off his music."

Third, the Landlord testified that the Tenant has accused the Landlord of entering his suite without giving proper notice, which was denied by the Landlord.

Fourth, the Landlord testified the Tenant changed the locks on the rental unit without the Landlord's permission.

Fifth, the Landlord asserted the Tenant smokes marijuana in his rental unit, and that the smoke negatively affects other tenants. D.H. also testified they have had rental properties for a number of years and smoking is never permitted in units. The Landlord is concerned about the potential cost of having to repaint the unit to remove the smell of smoke for subsequent tenants.

Sixth, the Landlord's husband testified the Tenant cut paths through some bushes without permission.

Seventh, the Landlord's husband testified that, upon receipt of the Landlord's documentary evidence, the Tenant called police and claimed he was being harassed by the Landlord.

Finally, the Landlord testified she has felt obligated to advise potential tenants about the concerns presented by the Tenant, and that this has resulted in losing desirable tenants.

According to the Landlord, the One Month Notice was served on the Tenant, in person, on May 31, 2017, which was not disputed by the Tenant.

In reply, the Tenant, for the most part, simply denied the Landlord's allegations of violence, threats, and noise. He stated that he just wants to live his life. He testified he still speaks with the other tenants, and included with his documentary evidence an unsigned and undated letter from T., which expresses empathy for the Tenant's circumstances and suggests the problem is "the poor insulation of this house which lets cigarette smoke and other noises in to my suite." However, the Tenant acknowledged

smoking marijuana at the rental property, noting he has a “federal exemption card” allowing him to do so. He also acknowledged clearing a path through bushes to the lake, and that he recently called police alleging harassment after he received the Landlord’s documentary evidence package. The Tenant also did not dispute that he changed the locks on the rental unit. During his testimony, the Tenant confirmed he is looking for alternative accommodation but that it is a difficult rental market.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause by issuing a notice to end tenancy. The burden is on the landlord to demonstrate sufficient justification for ending the tenancy.

The Landlord’s evidence is summarized above. Taken as a whole, I find that the evidence and submissions of the parties is sufficient for me to conclude that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. In particular, I find the Tenant created unreasonable noise from music and gaming, disturbing another tenant; smoked in the rental unit, disturbing another tenant; changed the locks on the rental unit without the Landlord’s authorization; and that the Tenant’s actions have caused the Landlord to lose potential tenants. As a result, the One Month Notice is upheld, and the Tenant’s Application is dismissed.

When a tenant’s application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the One Month Notice was submitted with the Tenant’s documentary evidence. I find the One Month Notice complies with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's Application is dismissed. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: August 3, 2017

Residential Tenancy Branch