



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the Notice); and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both sides were represented at the teleconference hearing. The hearing was held on November 22, 2017. All parties provided affirmed testimony and were given a full opportunity to be heard, to present evidence and to make submissions.

The Tenant did not present any documentary evidence in support of this hearing. The Landlord stated that she hand delivered her evidence package to the Tenant on November 14, 2017. The Tenant confirmed receipt of this package.

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 tenant entitled to have the landlord's 1-Month Notice to End Tenancy for Cause cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord issued the Notice for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the Landlord testified that the Tenant has breached several different material terms of the tenancy lease agreement. More specifically, she pointed to different items in the Lease Agreement, further listed below, which were identified as grounds for eviction.

The Landlord highlighted item #9 from the Lease Agreement which specifies that the Tenant agreed not to bring in additional occupants without consent for longer than two weeks at a time. The Landlord stated that the Tenant has had a guest staying over for much longer than 2 weeks. The Landlord provided copies of messages from another tenant who has seen a vehicle parked outside for quite some time, which is believed to be a long term guest of the Tenant.

The Landlord took several photos (provided into evidence) of the Tenant's guest's vehicle (a black Honda civic) during the night in order to show that the person driving that car is staying overnight and actually living in the Tenant's suite. The photos were taken during the night from the period of August 23, 2017 – September 5, 2017. The Landlord stated that she started tracking the guest's vehicle after getting the complaint from another occupant in the building in August of 2017.

The Tenant stated that he moved into the rental unit on July 1, 2017. The Tenant stated that he had a friend staying with him for a couple of nights at the end of July 2017, but that guest left after a few days. The Tenant further stated that his friend came back on August 13, 2017, and stayed with him until August 28, 2017. The Tenant further elaborated and said that his friend was not actually staying with him all nights during this period because she was also staying part time at another residence.

The Landlord also pointed to item #18 on the Lease Agreement which instructs the Tenant not to not disrupt, harass, annoy, or otherwise disturb other tenants in the building in a way that affects their quiet enjoyment. This includes being too noisy, particularly between the hours of 10:00 pm and 9:00 am. It further specifies that any tenant who causes another tenant to vacate the premises because of disturbance may be evicted. The Landlord testified that more than one other person in the building has complained about music, loud foot traffic, yelling, shouting, and general noise at a wide variety of times throughout the day, even late at night coming from the subject rental unit.

In particular, the occupant living beneath the Tenant says there is an unreasonable amount of foot traffic noise from children above and the Tenant has failed to put down area rugs to help alleviate the constant noise in high traffic areas. The tenant living below has written several letters, the most recent of which, on November 12, 2017, stated that she is looking for another place to stay until the issue above her (noise, foot traffic) is resolved, since it continues to be a problem.

The Landlord testified that a large part of the noise and disturbance is a direct result of the Tenant's failure to put down area rugs in high use areas of his apartment, which is a breach of item #24 on the Lease Agreement. This item specifies that, in order to protect the quiet enjoyment of other tenants, the Tenant is required to "adequately carpet...all concentrated traffic areas" within one month of moving in. The Landlord testified that after getting noise complaints from another rental unit about lots of foot traffic, excessive stomping, and running around, she issued a breach letter to the Tenant. The Landlord provided this letter to the Tenant on August 15, 2017, and highlighted the terms of the Lease Agreement the Tenant was breaching, as specified above.

The Tenant stated that after getting this warning letter from the Landlord, he put down a few foam mats to help with the noise. The Tenant acknowledged that he has a child and that his girlfriend is often over

during the day, sometimes while he is at work, but he did not feel the noise was likely to be unreasonable. The Tenant also stated that the foam mats are not currently down anymore because they didn't seem to be helping and he was tripping over them. However, the Tenant stated that he is willing to put them back down.

In a letter provided by the Landlord, she stated that when she was in the Tenant's rental unit to repair the buzzer on September 14, 2017, she noticed that there were no area rugs or runners in the heavy traffic areas of the apartment. During the hearing, the Landlord stated that she saw that there were only a couple small foam pieces spaced apart in places near the living room area. The Landlord stated that the Tenant, despite written warnings to sufficiently cover his high traffic areas with carpet, and despite agreeing to do this within a month of moving in, has failed to put down proper floor coverings (contrary to term #24 of the Lease Agreement).

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord has issued the Notice under more than one ground. However, I first turn to the following ground:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

During the hearing and in her documentary evidence, the Landlord has identified that item #24 of the Lease Agreement is a material term of the tenancy. This item is included in the breach letter provided to the Tenant on August 15, 2017. It clearly specifies that in order to protect the quiet enjoyment of other tenants, the Tenant is required to "adequately carpet" "all concentrated traffic areas" within one month of moving in. I note the Tenant stated that he put down foam mats in some areas after getting the breach letter from the Landlord on August 15, 2017. However, I am mindful that this was after the period of time he agreed on in order to adequately carpet the high traffic areas; the Tenant moved into the unit on July 1, 2017, and item #24 in the Lease Agreement clearly specifies that the Tenant must put this carpet down within one month.

The documentary evidence provided by the Landlord shows that the quiet enjoyment of other tenants, particularly the tenant below, is being materially impacted by the Tenant's failure to cover his floors with a noise dampening area carpets. The Tenant agreed to these terms of the tenancy prior to moving in and failed to adhere to them within the specified time. As such, the Tenant breached a material term of the Tenancy Lease Agreement, given that his failure to do so is substantially impacting others. Further, I also find the Tenant failed to sufficiently correct the issue after being warned on August 15, 2017, that he needed to cover his floors in high traffic areas because the Tenant below is being substantially disrupted. In fact, the Tenant below has indicated she is looking for another place to stay while the noise/foot traffic issue is resolved. Overall, I am not satisfied that a couple of foam mats were sufficient to satisfy the requirements of his tenancy lease agreement.

I find the Tenant had ample time to put down carpet and his failure to sufficiently do so resulted in the loss of quiet enjoyment for at least one other occupant in the building and the Tenant was in breach of a material term. Based on this reason, I find the Landlord had sufficient grounds to issue the Notice.

Having made this finding, it is not necessary to consider the remaining ground indicated on the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The landlord is entitled to an order of possession.

As the tenant was not successful with his application, I dismiss his claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the tenant's request to recover the cost of the filing fee.

The landlord is granted an order of possession effective **November 30, 2017, at 1pm**, after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: November 23, 2017

Residential Tenancy Branch