



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, RP, RR

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order cancelling a 1 Month Notice to End Tenancy for Cause issued August 15, 2017 (the "Notice") an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulation*, or the tenancy agreement, an Order that the Landlord make repairs to the rental unit, and an Order that the Tenant be permitted to deduct the cost of repairs, services or facilities from the rent.

The hearing was conducted by teleconference on November 23, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matters

When it was the Tenant's turn to testify he claimed he did not receive the Landlord's evidence and requested an adjournment. In evidence was a registered mail receipt confirming the Landlord sent the evidence package to the Tenant on November 9, 2017. The Tenant confirmed that he received a notice for the registered mail but did not retrieve the package. Failure to accept registered mail does not negate service.

The Landlord gave oral testimony as to the contents of the documentary evidence filed such that the Tenant was afforded an opportunity to respond to the allegations made against him.

Section 7.9 of the *Residential Tenancy Branch Rules of Procedure* provides the criteria for granting an adjournment and reads as follows:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

As communicated to the parties in the hearing, I denied the Tenant's request for an adjournment. In doing so I considered that the Tenant intentionally refused to accept the registered mail. Further, I find that the Tenant was afforded a fair opportunity to be heard as the Landlord gave detailed oral testimony as to the allegations made against the Tenant, thereby providing the Tenant an opportunity to make a full response. I further find, based on the allegations made in support of the Notice, that an adjournment would unduly prejudice the Landlord, as well as continuing the disturbance cause by the Tenant to the other occupants of the rental building.

No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant named the Building Manager, A.Y., as the Landlord on the Application for Dispute Resolution. The Landlord named on the tenancy agreement is a corporation. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Branch Rule of Procedure* I amend the Tenant's Application to correctly name the Landlord.

Rule 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim before me relates to the validity of the Notice and the question of the continuation of this tenancy. I find that this claim is not sufficiently related to the Tenant's other claims: for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulation*, or the tenancy agreement; an Order that the Landlord make repairs to the unit; and, the Tenant's claim for a reduction in rent. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy and I therefore addressed that issue and dismiss the Tenant's other claims with leave to reapply as applicable.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Residential Tenancy Branch Rules of Procedure 6.6 provides that a Landlord must prove the reason they wish to end a tenancy when the tenant applies to cancel a notice to end tenancy. Accordingly, the Landlord must present their case first and bears the burden of proving the Notice on a balance of probabilities.

The Landlord's Building Manager, A.Y. testified as follows. He stated that the tenancy began February 1, 2017. Monthly rent is payable in the amount of \$980.00 and the Tenant paid a security deposit in the amount of \$490.00. A.Y. confirmed that the rental unit is in a 36 unit building; 18 units facing the main road and 18 units facing the back alley. The subject rental unit faces the back alley.

A.Y. testified that he issued the Notice on August 15, 2017 as a result of numerous complaints from other residents of the rental building about the behaviour of the subject Tenant. The reasons cited in the Notice are as follows:

- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and,
- has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.

Introduced in evidence were letters from other occupants of the rental building, including the following:

- Letters from another resident, T.B. as follows:
 - A letter dated May 3, 2017 wherein she writes that the Tenant bangs a pipe or stick on his balcony every time he hears a noise. She writes that he has done this since he moved in and is disturbing the back of the building.
 - A letter dated May 24, 2017 wherein she writes the Tenant is “still banging on his balcony” and is stomping and pounding on his walls. She writes that she called the police at this time.
 - A letter dated June 1, 2017 wherein she writes that the Tenant is banging and throwing things on his balcony and raising the volume of his television.
 - A letter dated June 13/14, 2017 from T.B. wherein she writes that the Tenant was again banging until 2:00 a.m. and that she again called the police.
 - A letter dated June 29, 2017 wherein she writes that the Tenant was banging at 10:00 p.m. and 1:30 p.m.
- Letters from a resident, N.T., including:
 - An undated letter wherein he writes that the Tenant was screaming from about 7:00 a.m. until 10:00 p.m. on July 4, 2017 and was screaming at a howling dog, and throwing heavy objects and kicking his screen door and hitting walls on July 11, 2017.
 - A formal complaint dated July 14, 2017 wherein he writes about the unreasonable amount of noise created by the Tenant, including yelling and swearing. N.T. also writes that the Tenant throws things against his balcony railing, kicked his screen door off the racks, and was hitting the walls.
 - A handwritten letter dated July 20, 2017 indicating the day before the Tenant was making noise and banging.
- A letter dated July 11, 2017 from W.A., who writes that the Tenant was making noise and banging on his balcony. In this letter W.A. writes “please do something about it!!!! Look like going to destroy the balcony??”
- A noise complaint from a resident, C., dated August 14, 2017, who writes that the Tenant was playing loud music all day and night, and she heard punching and banging noises and yelling from the Tenant’s rental unit.
- A complaint dated September 11, 2017 wherein a resident, W.S., writes that the Tenant was banging to such an extend he woke up other residents.

A.Y. testified that he also lives in the rental building, and has personally heard the Tenant banging on the balcony, kicking the walls, and playing his music and stereo loud.

In terms of the Landlord's claim that the Tenant is engaged in illegal activity, A.Y. stated that when they attempted to do the pest control on September 12, 2017 they noticed several plants hanging from the ceiling, including what appeared to be marijuana. Photos submitted by the Landlord show the numerous plants hanging from the ceiling, including what looks to be a marijuana plant.

A.Y. stated that when they were in the rental unit on September 12, 2017, he also observed that as a result of the Tenant banging on the railing of his balcony he has excessively damaged it. Photos submitted by the Landlord show the damage to the railing, which appears to be covered in tape. The Landlord also submitted a photo of the bedroom door showing a large crack, also covered by black tape.

The Landlord confirmed that the Tenant was provided a warning letter on May 26, 2017, June 15, 2017 and on July 17, 2017. Copies of those letters were provided in evidence; each letter informed the Tenant that his tenancy was in jeopardy due to the excessive noise in his rental unit and disturbance of other residents.

In response to the Landlord's submissions, the Tenant stated that he received the "first couple warning letters" in May and June regarding banging furniture around and possibly causing damage. He stated that after he received the warning letters he stopped banging furniture around. When I asked him why he was banging furniture around, he stated that he "became quite upset" because of the barking dog in the rental unit next door but below. He stated that he "got very scared" about the dog and banged around furniture to try to scare it away from him.

The Tenant further stated that he has no idea what happened to the railing. He further stated that there was no damage to the door, and that it was just normal wear and tear.

The Tenant stated that he does not even use his balcony and was not out on his balcony during many of the dates in question such that he couldn't have made the noises complained about by others.

The Tenant stated that he was unaware the police were called, and that he never heard that police were at his door.

The Tenant stated that the building is very old and not in good condition which is why sound travels between the units.

The Tenant stated that he talked to Building Manager about the barking dog and they have failed to address the issue. He claimed that he then talked to animal control who managed to quiet down the dog. He stated that there hasn't been any problems for over three months now.

The Tenant then stated that he has lived in the rental unit since February and there have not been any problems about his television. He also stated that he felt the Building Manager was "out to get him" and is picking on him" and trying to "cause any problems".

The Tenant said that he doesn't feel that he is the one who is causing problems; rather, he says that the problem is the barking dog. The Tenant submitted evidence of the complaints he has made to the Landlord about the barking dog. He also submitted a "Barking dog Complaint Form" which he indicates was submitted to Animal Control. In answer to the question "What steps have you taken to try to stop the disturbance?" the Tenant writes:

"Yelling at the owner
Jumping on the floor
Talking to landlord. He will do nothing about it.
Increasing volume of my tv"

Analysis

After careful consideration of the evidence and testimony before me, and on a balance of probabilities I find as follows.

I find the Landlord has met the burden of proving that the Tenant has significantly interfered with an unreasonably disturbed other occupants of the rental building. I accept the Landlord's evidence that numerous occupants have complained about the excessive noise created by the Tenant. The nature of their concerns are set out in detail in the body of this my decision and speak to the significant negative impact the Tenant's actions have had on them.

The Tenant conceded that he was banging his furniture around as a means to deal with the neighbours barking dog. Further, on his complaint to animal control, he also writes that he yells at the dog's owner, jumps on the floor and raises the volume of his television.

I accept the Landlord's evidence that the Tenant also bangs on the railing of his balcony and has done so to such an extent that the railing is significantly damaged as shown in the photos submitted by the Landlord. I also find that the Tenant damaged the door in the rental unit over and above normal wear and tear.

I find that the Tenant's reaction to the barking dog is excessive and disturbing to others. I also find that he is unwilling to accept that his actions have a negative impact on others or that his behaviour is inappropriate.

The Tenant's application to cancel the Notice is dismissed. The tenancy shall end in accordance with the Notice. As the effective date of the Notice has passed, I grant the Landlord an Order of Possession effective two (2) days after service on the Tenant. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

As I have found the Tenant has significantly interfered with and unreasonably disturbed other occupants, I need not consider whether the Tenant's marijuana plants have been grown illegally. The Landlord is at liberty to apply for monetary compensation for any damage to the rental unit.

Conclusion

The Tenant's Application to cancel the Notice is dismissed. The Landlord is granted an Order of Possession effective two (2) days after service on the Tenant.

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 30, 2017

Residential Tenancy Branch