



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDCT DRI FFT OLC

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 (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the landlord's 1 Month Notice on September 28, 2017, with an effective date of October 31, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

During the hearing, the tenant confirmed that the only outstanding issues for this hearing were regarding the 1 Month Notice. Both parties resolved the matter related to the overpayment of rent and rent increase. The tenant withdrew his application except for the application for the cancellation of the landlord's 1 Month Notice and recovery of the filing fee.

Issues

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on October 1, 2014, with monthly rent currently set at \$845.00 per month, payable on the first of each month. The landlord collected, and still holds, the \$400.00 security deposit for this tenancy.

The landlord submitted the notice to end tenancy providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
 - i) significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - ii) put the landlord's property at significant risk; or
 - iii) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:
 - i) adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.

The landlord testified that she had served the tenant the 1 Month Notice for several reasons. The first reason provided by the landlord was that the tenant would create a disturbance by playing his music extremely loud. The tenant also had a dog, which would bark all day and night. In addition the tenant smoked inside his suite, and threatened the landlord by firing a BB gun at her, and her property.

The landlord testified that on September 27, 2017 an incident occurred when she had approached the tenant about his loud stereo, and asked him to turn his music down. The testified that the tenant responded by shooting his BB gun at herself and her daughter. The landlord testified that she had called the police, as she did not feel safe. No charges were ever laid against the tenant. The landlord testified that there were previous incidents when the tenant had shot at her house.

The landlord's witness BD testified that although he was not present, he could hear a BB gun and a pinging noise. He testified that he did witness the tenant and a neighbour shooting a BB gun on other occasions at the stop sign and landlord's satellite dish. He testified that on September 27, 2017 he heard the tenant and his friend yelling at the landlord, but he did not personally witness the landlord being shot at.

SE also testified as the landlord's witness to confirm that the home smelled like cigarette smoke. She also testified that she had heard the tenant's dog barking. The landlord submitted text messages from her to the tenant regarding the smoke in the home.

The tenant disputed the landlord's testimony and testified that he did not own a BB gun, nor did he ever shoot one. He admits that he was present when his friend had fired a BB gun, but he disputes that he had shot at the landlord, her family, or her property at any time.

The tenant testified that although his dog was a handful, the landlord had given him permission to allow the puppy to live there. The tenant testified that the landlord had forced him to sign the warning letter dated May 31, 2017 that stated that he had discussed with the landlord about the dog's whining and barking, as well as the loud stereo, foul language, and smoking.

The tenant disputes the landlord's testimony that he smoke inside, stating that he only smoked outside.

Analysis

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on October 8, 2017, ten days after receiving the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

Although the landlord provided testimony that the tenant smoked inside, and the landlord's witness testified that smelled the smoke inside the house, the tenant disputed this. I find that the witness testimony and text messages do not sufficiently support that the tenant smoked inside the home, and furthermore whether this behaviour continued after the warning letter was given to the tenant.

The landlord also testified that the tenant's dog caused significant disturbance to herself and others with its barking and whining. Although this barking and whining may be a disturbance, I find that it was undisputed by the landlord that she had allowed the tenant to have this pet, and I am not satisfied that the landlord had satisfied the burden of proof to demonstrate that this behaviour is serious enough to warrant terminating this tenancy.

Although the tenant disputes having ever owned or fired a BB Gun, the tenant did not dispute that he was present when his friend had fired the BB Gun at the landlord's property. The landlord's witness BD confirmed that he saw the tenant and his friend shooting at the landlord's satellite dish.

Section 47 of the *Act* allows the landlord to issue a 1 Month Notice to end the tenancy if “the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; put the landlord’s property at significant risk; or seriously jeopardized the health or safety or lawful right of another occupant or the landlord”.

Although the tenant disputes having participated in the shooting of the BB Gun, he did not dispute that his friend had. Section 47 includes “a person permitted on the property by the tenant”, and on this basis I am satisfied that the landlord had provided sufficient evidence to demonstrate this tenancy should end on the grounds provided on the 1 Month Notice. I find that the behaviour of the person on the property allowed by the tenant significantly interfered with and unreasonably disturbed the landlord. Under these circumstances, I am not allowing the tenant’s application to cancel the landlord’s 1 Month Notice. The tenant’s application is dismissed.

Section 55(1) of the *Act* reads as follows:

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.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenant was not successful in his application, his application to recover the filing fee is dismissed.

Conclusion

I dismiss the tenant's entire application for dispute resolution.

I find that the landlord's 1 Month is valid and effective as of October 31, 2017. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The remainder of the tenant's application is withdrawn.

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: January 9, 2018

Residential Tenancy Branch