



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent, (the landlord) and the tenant attended the hearing and 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.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and evidence which was sent by registered mail to them on January 11, 2018. In accordance with sections 88 and 89 of the Act, I find the landlord was duly served with the Application and the tenant's evidence.

The tenant acknowledged receipt of the landlord's evidence which was left with him on January 30, 2018. In accordance with section 88 of the Act, I find the tenant was duly served with the landlord's evidence.

At the outset of the hearing it was established that the tenant selected the wrong option when applying to dispute the notice to end tenancy. The tenant requested to amend their Application to dispute a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the Act. As the landlord served the One Month

Notice to the tenant, I find that they will not be prejudiced by this amendment and I will allow it. In accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I allow the amendment of the Application to dispute the One Month Notice.

The tenant confirmed that they received the One Month Notice on December 27, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

Issue(s) to be Decided

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

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The landlord and the tenant agreed that this tenancy commenced on October 01, 2016, with a current monthly rent in the amount of \$1,633.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$787.00.

A copy of the signed December 27, 2017, One Month Notice was entered into evidence by the landlord. In the One Month Notice, requiring the tenant to end this tenancy by January 31, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

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

The landlord also provided into evidence:

- a copy of a written response from the landlord regarding the tenant's dispute of the One Month Notice in which the landlord provides a timeline of events that have occurred from March 17, 2017, to January 08, 2018;
- a copy of an e-mail dated March 17, 2017, from the landlord to the tenant indicating that the landlord found drums in the rental unit during an inspection and requesting the tenant to remove them as complaints have been received in the past regarding drums being played in the rental unit. The landlord states in his e-mail that that if the drums are not removed, the landlord would consider that a breach of a material term of the lease;
- a copy of a witness statement dated January 22, 2018, from a person who lives in the house next door to the rental unit. The witness states that music has been played so loud from the rental unit in the past year that it resonates through the three quarter inch stucco exterior in the witness's house;
- a copy of a witness statement dated December 26, 2017, from the downstairs occupant stating that the tenant has been playing drums and then played loud music until 2:00 a.m. in the morning until the police were called and arrived to the rental unit; and
- a copy of a notice to end tenancy dated in January 15, 2017, from the previous occupant who was living downstairs stating that the reason they are ending their tenancy is "due to noisy disrespectful upstairs tenant".

The tenant submitted into written evidence:

- a copy of a letter from the tenant to the landlord dated January 12, 2018, in which the tenant states that they have had numerous difficulties with the downstairs occupants, that it is them who should have to move and that it was a by-law officer who attended the rental unit on December 26, 2017, not the RCMP; and
- various pictures of damage to two cars and snow on a driveway;

The landlord testified that a previous occupant of the downstairs unit in the residential premises had ended their tenancy in February of 2017 as they did not feel safe due to a disrespectful noisy neighbour, who is the upstairs tenant. The landlord stated that during an inspection of the tenant's rental unit in March 2017, the landlord discovered a full set of drums set up in the living room of the rental unit, which the tenant occasionally plays. The landlord submitted that he sent the tenant an e-mail and a registered letter to advise them that they cannot play the drums in the rental unit and that this is a material term of the tenancy agreement.

The landlord submitted that new occupants moved into the downstairs unit in July of 2017 and for the first two months everything was ok between the upstairs tenant and

the downstairs occupant. The landlord testified that after two months he started to receive noise complaints from the downstairs occupants regarding drums being played in the upstairs unit as well as screaming and hollering. The landlord stated that he would call the tenant about the issue and things would be better for a time. The landlord testified that on December 26, 2017, the downstairs occupant called the landlord about loud music and drums coming from the upstairs unit and that the police attended the upstairs rental unit due to noise complaints.

The landlord stated that when he attended the rental unit the following day to serve the One Month Notice to the tenant, they were hostile, angrily slamming the door and then kicked the wall. The landlord testified that he called the police at that time but did not pursue any further action.

The landlord submitted that a neighbour who lives in a house next to the residential premises that the tenant lives in told the landlord that loud music has been coming from the tenant's rental unit throughout this past year and comes through the walls of her house.

The landlord testified that he received a call from the downstairs occupant on January 08, 2018, about drums being played in the upstairs unit and the landlord could hear the drums coming through the phone. The landlord submitted that he called the tenant about the drums and the tenant denied that they were set up and invited the landlord to inspect the unit but when the landlord attended the rental unit 10 minutes later he was denied access and greeted with hostility.

The tenant testified that the landlord has been reasonable but does not live at the residential premises. The tenant stated that the downstairs occupants complain about the tenant's children but the tenant does not call the landlord when the downstairs occupants are fighting with each other. The tenant submitted that one of his daughters has an issue that causes her to talk loudly. The tenant stated that the drums are disassembled and boxed up as of three months ago. The tenant testified that they cannot explain the loud music and that he just watches movies with his children. The tenant stated that the occupants downstairs have not approached him about any noise issues.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so.

Section 47 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on December 30, 2017, and since I have found that the One Month Notice was served to the tenant on December 27, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*. I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice for the tenant.

I have reviewed all documentary evidence. Based on the landlord's written evidence and affirmed testimony of all parties, as well as the balance of probabilities, I find that the tenant has unreasonably disturbed the landlord and other occupants in the residential premises.

I find that there are three separate witness accounts from three different parties that are consistent in stating that there have been and currently are issues with unreasonable noise coming from the rental unit. I find that these three separate parties have all indicated that they have been unreasonably disturbed by the noise coming from the tenant's rental unit. Although the neighbour in the house next door is not an occupant or the landlord, I find that her witness statement supports the fact that there has been unreasonable noise coming from the residential premises next to her this past year as she can hear it coming through the walls of the tenant's unit and the walls of her house.

I accept the occupant's witness statement that there was drumming and loud music coming from the tenant's unit on the night of December 26, 2017, which continued to a late hour. Although the tenant disputed that it was the police who attended the rental unit on the evening of December 26, 2017, the tenant does admit that a law enforcement official did attend the rental unit that evening for unreasonable noise which supports the occupant's written statement. I find the landlord's attempted inspection of the premises on January 08, 2018, after hearing drums coming through the downstairs occupant's phone, supports the fact that the drums were still set up as of that date and still being played despite the landlord giving clear instructions to the tenant that this was not acceptable behaviour. I further find that if they were set up on January 08, 2018, then it is likely that they were set up on the night of December 26, 2017. I find that the occupants were unreasonably disturbed by the tenant's drumming and loud music on December 26, 2017.

Therefore, I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the tenant's Application to set aside the One Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the *Act*. I find that the One Month Notice complies with section 52 of the *Act*. The landlord testified that the tenant has paid the monthly rent for February 2018, and for this reason, I grant an Order of Possession to the landlord effective as of February 28, 2018.

As the tenant has not been successful in their Application, I dismiss their request to recover the filing fee from the landlords, without leave to reapply.

Conclusion

I dismiss the tenant's Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlords **effective on February 28, 2018, after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed 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: February 16, 2018

Residential Tenancy Branch