



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROMAV VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT MNDCT MNSD

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 22, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both sides were represented at the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord stated that they received the Tenant's evidence. However, the Tenant stated that they did not receive the Landlord's evidence. The Landlord stated that they sent their evidence by registered mail on December 18, 2017, to the Tenant's rental unit. The Landlord stated that the package was unclaimed, and was returned to them. The Landlord provided proof of mailing, which corroborates the manner in which they stated they sent it. I find the Tenant is deemed to have received this package on December 23, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*. Evidence may be deemed served, even if one party failed to collect the evidence sent by registered mail. Further, since I find the evidence was deemed served, I will consider it in this review.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss unrelated matters, with leave to reapply, on the Tenant's application with the exception of the following claim:

- to cancel the 1 Month Notice to End Tenancy for Cause.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on November 27, 2017. This Notice was issued for Cause 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

The Landlord stated that the Tenant has a history of acting out, yelling, banging on walls, and disturbing other occupants of the building. The Landlord stated that there were some issues last April in 2017, where the Tenant was banging on walls and screaming through the walls at another adjacent occupant because there was some noise transfer from another occupant's unit into his. The Landlord stated that this other occupant reported that the Tenant was screaming and banging when she was doing various things in her unit adjacent to his. She noted that the Tenant would act out when she was getting ready for work, having a shower, and sometimes while she was having

sex. This occupant feels unsafe and fearful because of the Tenant's extreme reactions to any noises he hears.

The Landlord also pointed out that these issues have been ongoing and more recently, in November of 2017, complaints and issues have started again. The Landlord stated that there was an incident on November 16/17, 2017, where the Tenant was banging on walls, yelling, and reacting to the sounds he was hearing from the occupant above his unit. The Landlord stated that they got multiple written complaints from other occupants of the building (at least 4) stating they had heard the Tenant acting this way. Some occupants noted that this behavior was occurring at nearly 4am. The Landlord provided these letters of complaint into evidence.

The Tenant stated that the occupant above his unit is way too loud, and it upsets him because he feels he has lost quiet enjoyment of his rental unit. The Tenant stated that he will often hear her having sex, and walking around, and it is frustrating for him because of how loud it is in his rental unit. The Tenant stated that the sound transfers really easily through the floors. The Tenant and his advocate, L.P., acknowledged that, on November 16, 2017, the Tenant was banging pots and pans at 4:30 am because he was upset with having to listen to noises he heard from the unit above. The Tenant stated that it seems like the person above him is stomping around and making an unreasonable amount of noise.

The Landlord stated that prior to the Tenant moving into this particular unit, they have had no complaints about the occupant living above the Tenant, and the Landlord believes that the Tenant is likely very sensitive to noise. The Landlord expressed that this is an older building and noise does transfer but the Tenant's reactions are unreasonable and extreme and they disturb others in the building.

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 the following ground:

The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord

The documentary evidence and testimony provided by the Landlord shows that the quiet enjoyment of other tenants is being impacted by the Tenant's behaviour (banging and yelling). I acknowledge that the Tenant is not happy with the amount of noise transfer from the unit above his. However, I do not find it reasonable or appropriate to bang and yell through the walls in response to this noise transfer from above, such that it would disturb several other occupants in the building. Documentary evidence shows that multiple other occupants in the building have been impacted by the Tenant's loud behaviour on more than one occasion. More recently, there was an incident on November 16/17, 2017. In the hearing, the Tenant and his advocate acknowledged that the Tenant was banging pots and pans and yelling at 4:30 am on that day because he heard the Tenant above him and was frustrated. There are also letters from several other occupants in the building indicating that they were disturbed by the Tenant's loud behaviour. Subsequent to this, the Landlord issued this Notice in attempt to end all of the disturbances.

Ultimately, I find the Tenants reaction (on more than one occasion) to the noise he heard above him was extreme, and inappropriate. I find there is sufficient evidence to show that other occupants have been unreasonably disturbed by the Tenant's behaviour and I find the Landlord had sufficient grounds to issue 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 **two days 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: February 26, 2018

Residential Tenancy Branch