



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and a copy of the 1 Month Notice dated November 28, 2017 via Canada Post Registered Mail. Both parties also confirmed that the landlord served the tenant with the submitted documentary evidence via email on February 6, 2018 at the tenant's request and a second time in person on February 7, 2018.

During the hearing the tenant requested an adjournment of the hearing to obtain letters from other tenants in support of his dispute that there is no excessive noise. The landlord disputed the request arguing that the tenant had applied on November 29, 2017 and has no need to adjourn the hearing as he has had almost 2 months to obtain these letters since he filed the application. I find in reviewing the submissions of both parties that no adjournment is required. In an application to dispute a notice to end tenancy it is the landlord's responsibility to provide sufficient evidence that a reason for cause listed on the notice has been met. As such, the tenant's request to adjourn the hearing is denied.

As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated February 1, 2013. The monthly market rent began at \$320.00 payable on the 1st day of each month. Other monthly charges listed are: cablevision \$31.00, utilities \$10.00. A security deposit of \$239.00 was paid.

Both parties confirmed that on November 28, 2017, the landlord served the tenant with the 1 Month Notice in person on November 28, 2017. The 1 Month Notice sets out an effective end of tenancy date of December 31, 2017 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of cause provided on the 1 Month Notice state in part,

the tenant has had repeated complaints regarding the volume of his tv and has been asked and warned on numerous occasions but continues to have the tv on an overly loud volume setting which is seriously disturbing his neighbors.

The landlord claims that numerous complaints were filed against the tenant for loud noise. In support of this claim the landlord has provided the following warning letters given to the tenant by the landlord:

October 11, 2013	Warning letter, re: noise complaint
January 29, 2015	Warning letter, re: noise complaint
February 27, 2015	Warning letter, re: noise complaint
October 17, 2017	Warning letter, re: loud music/tv

As well, the landlord has also submitted copies of tenant noise complaints given to the landlord which resulted in the 1 Month Notice being issued:

November 19, 2017	Complaint letter, re: loud music source #504
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The tenant provided written details which state that sound is leaving the suite and entering other suites on his side of the building. Zero complaints from adjacent suites next to tenant's.

During the hearing tenant claimed that on each occasion he “rectified” the noise issue. The tenant’s advocate stated on behalf of the tenant that he was disputing the noise complaints. After some lengthy discussions, the tenant’s advocate retracted the tenant’s claim disputing the noise complaints. The tenant clarified that after each noise complaint, he had “rectified” the noise issue by turning down the sound.

The landlord argued that the tenant had indeed turned down the noise after each complaint, but that he would later continue on another date causing another complaint of excessive noise.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties have confirmed that the 1 Month Notice dated November 28, 2017 was served to the tenant by the landlord in person on November 28, 2017. The landlord has provided undisputed affirmed testimony that noise complaints have been received by other tenants by the landlord. The landlord has also provided copies of multiple warning letters the most recent on October 17, 2017, re: Warning in breach of a material term. That letter states in part,

We have received several complaints about the noise level from your TV on an ongoing basis. The noise is loud enough to disturb the tenants two floors above and below you. We have discussed this in the past and you have received warning letters about the noise. It is your responsibility to not unduly disturb your neighbors...This is a breach of a material term of your tenancy....You need to keep the volume of your tv at an acceptable level, making sure it is turned low between the hours of 10pm and 9am. Failure to comply with this written notice may result in you being given a notice to end a residential tenancy. WE are writing this letter to you in response to written and verbal complaints from tenants in your building. You are invited to write a response to this letter correcting any misinformation that may be been contained in the complaint.

Although the tenant has repeatedly claimed that he had “rectified” the noise issues, I find that in doing so, he has admitted that multiple noise complaints were filed with the landlord. As well, the landlord has issued multiple warning letters as shown above in the landlord’s documentary evidence. The landlord has confirmed that upon being notified, the tenant has turned down the noise after each complaint, however, as indicated on the warning letter these complaints are breach(s) of the tenancy agreement and could result in a notice to end tenancy. I find that the landlord has provided sufficient evidence of unreasonable disturbance caused by the tenant. The tenant’s own admission that he has turned down the sound on each occasion that he was notified. However, instead of taking greater care to keep the noise level to an acceptable level, the tenant has caused further complaints of excessive noise. The landlord has provided a total

of 4 warning letters regarding noise complaints of which the first warning should have been acted upon by the tenant. The 1 Month Notice dated November 28, 2017 is upheld. The tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the Act, the landlord is entitled to an order of possession effective two days after service upon the tenant.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and 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 15, 2018

Residential Tenancy Branch