



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and two agents for the Landlord (the “Agents”), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them in the manner requested in the hearing.

Preliminary Matters

Preliminary Matter #1

The Tenant sought multiple remedies under multiple unrelated sections of the *Act*. 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.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As a result, I find that the Tenant's claim for an order for the Landlord to comply with the *Act*, regulation or tenancy agreement is not sufficiently related to whether the tenancy will end and I therefore exercise my discretion to dismiss this claim with leave to re-apply.

Preliminary Matter #2

The Tenant testified that she has a witness who would like to provide testimony on her behalf, but due to a scheduling conflict, they could not be present in the hearing today. The Tenant requested that I call the witness at another time to either accept her testimony or confirm that she is a real person as there is documentary evidence from her in the evidence before me.

I advised the Tenant that once the hearing is closed, I will not accept any further documentary evidence or testimony for consideration. I also advised the Tenant that it would be inappropriate of me to have contact with the parties or their witnesses outside of the hearing and that as a result, I cannot call her witness once the hearing has concluded. The Tenant reaffirmed that her witness cannot be present in the hearing due to a scheduling conflict and stated that she was advised by the Residential Tenancy Branch (the "Branch") that I could call her witness at another time. I reiterated to the Tenant that such contact would be inappropriate and a breach of both the Rules of Procedure and administrative fairness as the parties would not be privy to the testimony and evidence provided by her witness. As a result, I declined the Tenant's request to call her witness after the conclusion of the hearing and the hearing proceeded based on the documentary evidence before me and the testimony provided in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

If the Tenant is not successful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month-to-month tenancy began on December 1, 2012.

The Agents testified that they have received multiple complaints from the police and other occupants of the building regarding the Tenant's behaviour and that the Tenant frequently calls one of the Agent's in the middle of the night. As a result, the Agents testified that a One Month Notice was posted to the door of the Tenant's rental unit on December 27, 2018.

The One Month Notice in the documentary evidence before me, dated December 27, 2018, has an effective vacancy date of January 31, 2018, and states the reason for ending the tenancy is because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant of the building or the Landlord.

The Tenant acknowledged receiving the One Month Notice from her door but could not provide the exact date upon which she received it.

The parties provided significant opposing testimony which can be summarized as follows. The Agents testified that the Tenant has made repeated and unfounded noise complaints regarding all of the occupants who have lived above her in the last four years. The Agents testified that they and the police have investigated that Tenant's noise complaints on numerous occasions by attending the rental unit complained about and that the occupant has been found to be in bed, away from home, or making a reasonable amount of noise for daily living. The Agents stated that the apartment where the Tenant resides is located in a three level wood frame construction apartment building that is approximately 40 years old. As a result, the Agents stated there is some creaking, which is normal for the age and construction of the building, and that there is some noise transfer between units and the hallway despite the use of carpet. However, the Agents argued that the noise transfer is reasonable given the age of the building and is not significant in nature.

The Agents pointed to multiple written complaints from other occupants of the building. One of the complainants stated that she has heard screaming in the Tenant's rental unit and complained that the Tenant plays her radio loudly 24-hours a day, often with her door ajar. The complainant also stated that she has witnessed the Tenant sneaking around outside of her apartment door, which makes her uncomfortable, and that she has been woken many times by the arrival of police at the Tenant's door. Another complaint stated that the Tenant has been harassing him for two years by making repeated and unfounded noise and stalking complaints to the police and the building management. A third complainant stated that when the Tenant became aware that they were moving out of the building, the Tenant attended their place of work looking for them. The complainant stated that although they were not at work, the Tenant refused to leave until someone provided her with the complainant's personal phone number, which the Tenant then called repeatedly leaving several messages alleging to be the new Tenant of his rental unit and demanding the keys.

Further to this, one of the Agents testified that the Tenant repeatedly calls both her cell phone and home phone in the middle of the night regarding noise and other complaints and that the police have complained to the building management about her incessant calls. The Agent provided seven police file numbers which she states are for 2017 alone. Although the Agent acknowledged that she is the 24 hour emergency contact for the building, she stated that the Tenant's incessant and unfounded complaints in the middle of the night amount to an unreasonable disturbance.

The Tenant refuted all of the allegations made by the Agents and the other occupants of the building and although she acknowledged playing her radio too loud on one occasion, she denied playing her radio loudly for significant periods of time.

The Tenant testified that one of the complainants, the occupant above her, is actually stalking and harassing her both inside and outside of her apartment and that his allegations against her are false. She stated that wherever she is in her apartment, the occupant above her mirrors her location and causes consistent and unreasonable noise in that location such as scrapping furniture on the floor, slamming doors, banging, hammering, stomping, running water, playing the TV or music loudly or rolling objects across the floor. The Tenant testified that in addition to this, he listens in on her conversations which is why when the police or the Agents of the Landlord arrive to investigate her noise complaints, he is always quiet. The Tenant submitted portions of police reports regarding her complaints about the occupant above her as well as a statement from a witness outlining the noises and behaviours of the upstairs occupant during one of her visits to the Tenant's unit. The Tenant also submitted a Dr.'s note regarding ear problems caused by her need to wear ear plugs.

Further to this, the Tenant stated that she has a good relationship with most of the other occupants of the building who have never made any complaints against her. She also stated that although she has attempted to be friendly with the one of the other complainants in the building, they are hostile and rude to her for an unknown reason.

Ultimately, the Tenant stated that it is she who is suffering from harassment and unreasonable disturbance from the occupant above her, that the One Month Notice is baseless and invalid, and that Agents for the Landlord are intentionally persecuting her.

Analysis

Although the Tenant could not recall the exact date upon which she received the One Month Notice, she did acknowledged receiving it. The Agents testified that the One Month Notice was posted to the door of the Tenant's rental unit on December 27, 2017, and provided a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") indicating that the One Month Notice was served in the manner described above. Section 90 of the *Act* states that unless earlier received, a document given or served by attaching a copy to a door is deemed to be served on the third day after it is attached. Given the above, I find that the Tenant is deemed

served the One Month Notice on December 30, 2017, three days after it was posted to the door of her rental unit.

Section 47 of *Act* states that a landlord may end a tenancy by giving 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 of the residential property.

Although the Tenant and the Agents provided significant testimony and documentary evidence for my consideration in relation to this matter, for the following reasons I find that the Landlord has satisfied me, on a balance of probabilities, that they had cause under section 47 of the *Act* to end the tenancy.

Although the Tenant submitted a statement from a witness regarding the behavior of the upstairs Tenant, I find most of the activities listed by the witness are normal daily living activities such as running water, the sound of footsteps, doors opening and closing, creaking sounds, the sounds of general movement, and the occasional dropping of objects. In any event, whether the Tenant has been unreasonably disturbed by the occupant above her is not the matter I must decide in this hearing. As a result, I have only considered this evidence as it relates to the Tenant's allegation that the complaints from the occupant above her are false.

Although the Tenant has alleged that the accusations by the complainants against her are false, her primary argument related to the validity of the complaints from the occupant above her. As multiple occupants of the building submitted multiple written complaints regarding the unreasonable disturbances to them from the Tenant, I do not find that her testimony or documentary evidence regarding the validity of the complaints from the occupant above her outweighs the preponderance of evidence before me from two other occupants of the building and one of the Agents that they themselves have been unreasonably disturbed by the Tenant.

Based on the above, I find that the Landlord has established, on a balance of probabilities, that they had sufficient cause pursuant to section 47 of the *Act* to end the tenancy because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property. As a result, the Tenant's Application to cancel the One Month Notice is dismissed without leave to reapply.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the *Act* as it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form.

Given the above, and pursuant to section 55 of the *Act*, the Landlord is therefore entitled to an Order of Possession. As the effective date of the One Month Notice has passed, the Order of Possession will be effective March 31, 2018, after service of the Order on the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the One Month Notice and recovery of the filing fee is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on March 31, 2018**, after service of this Order on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: March 12, 2018

Residential Tenancy Branch