



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 tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the Act").

The landlord and the tenants 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. The tenants' legal counsel (Counsel) stated that he would be assisting the tenants with their oral submissions and that Tenant S.A. (the tenant) would be the primary speaker on behalf of the tenants.

While I have turned my mind to all the documentary evidence 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 for Dispute Resolution (the Application) which was sent by registered mail on January 09, 2018. In accordance with section 89 of the Act, I find the landlord was duly served with the Application.

The landlord also acknowledged receipt of the tenants' evidentiary package on February 18, 2018, but stated that the evidence was late and that he objected to its consideration. The landlord stated that he did have a chance to review the evidence.

Counsel submitted that they were waiting for the police report and medical reports before they could serve to the Residential Tenancy Branch and the landlord.

Rule 3.14 of the Residential Tenancy Branch (RTB) Rules of Procedure (*the Rules*) states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing.

Rule 3.17 of the *Rules* states that evidence not provided to the other party in accordance to the *Rules* may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available prior to when they submitted their evidence.

Rule 3.17 further states that the arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice and that both parties must have the opportunity to be heard on the question of late evidence. I find that the landlord did confirm that he had a chance to review the tenants' evidence.

I further find that the landlord is not unreasonably prejudiced by consideration of the tenants' late evidence. I find the police report is from a neutral party based on the police attending the residential premises at the time of an occurrence in May 2017. Regarding the medical documents, I find the *Act* does not provide for special considerations based on physical and mental conditions. For the above reasons I find that I will consider the tenants' late evidence

The tenant acknowledged receipt of the landlord's evidence served to them by registered mail on February 05, 2018, and that they were able to access the audio recordings. In accordance with section 88 of the *Act*, I find the tenants are duly served with the landlord's evidence.

On the Application the tenants indicated that the One Month Notice was posted to their door and that they received it on January 02, 2018. In the hearing the tenant confirmed the One Month Notice was personally served to them on December 31, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the One Month Notice on December 31, 2017.

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?

Background and Evidence

Written evidence was provided that that this tenancy commenced on June 01, 2015, with a monthly rent of \$675.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$337.50.

A copy of the signed One Month Notice dated December 30, 2017, was entered into evidence by the landlord. In the One Month Notice, requiring the tenants to end this tenancy by January 31, 2018, 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.*

The landlord also provided into evidence:

- a copy of a summary of the landlord's evidence and the incidents that have occurred with the tenants from April 2017 until the One Month Notice was served on December 31, 2017;
- a copy of an e-mail exchange between the landlord and a representative from the Strata Council dated April 20, 2017. The e-mail is regarding Occupant A complaining that Tenant S.A. waited for them outside the residential premises previously in the month and harassed them, interfering with their right to enjoy the strata lot. The landlord responds that they have advised Tenant S.A. to bring concerns about noise to the landlord rather than confronting people directly;
- a copy of a letter that was personally served to the tenants on May 02, 2017, requesting that the tenants submit any noise complaints in writing to the Strata Council and instructions on how they can serve correspondence to the Strata Council, or to call the landlord for assistance in addressing any noise related issues with other occupants instead of trying to resolve them singlehandedly
- a copy of an e-mail exchange between the landlord and a representative from the Strata Council dated May 17, 2017, in which, the landlord advises the representative that they had a frank chat with Tenant S.A. regarding his continued interference with other occupants in trying to resolve concerns with noise and the potential for the strata to remove permission for the landlord to rent his unit out which would result in the tenants eviction. The landlord further states that Tenant S.A. assured the landlord that they would refrain from interfering with other occupants in the building;
- a copy of a letter from the landlord to the tenants dated August 02, 2017, and served by registered mail, in which the landlord notifies the tenants that multiple complaints have been received regarding Tenant S.A.'s conduct towards other occupants in the building. The landlord states that Tenant S.A. has admitted to breaking their pledge to not interfere with other occupants but insists that they

are polite conversations. The landlord maintains in the letter that if the conversations were polite then the landlord would not be receiving complaints from multiple parties. The landlord advises the tenants that further complaints will result in a notice for eviction;

- a copy of a letter from the Strata Council to the landlord dated November 07, 2017, with a summary of all the incidents that have occurred between the tenants and other occupants from March 04, 2017, to July 18, 2017. The last complaint on the letter is regarding an incident when Tenant S.A. is alleged to have sworn at a woman (Occupant B) and her child on an adjacent balcony, regarding her smoking, and telling them to go to the park. Occupant B further complained that Tenant S.A. repeatedly swore at them and they heard vague threats in a menacing tone coming from his rental unit;
- The letter goes on to state that the tenants have continued to interfere with other occupants since July 18, 2017, but that these complaints have been verbally or by phone only. Finally, the letter states that if the tenants do not cease with their interference with other occupants, Strata Council will have no choice but to fine the landlord \$200.00 and request the landlord to remove the tenants from the rental unit which could result in further legal steps taken by Strata Council against the landlord to remove the tenants;
- a copy of the Strata Council response dated December 19, 2017, to an in-person hearing with the tenants that took place on December 12, 2017, in which Strata Council considered the tenants' version of the events that occurred but did not find any grounds to withdraw the complaints made against the tenants and that the complaints will remain on the record;
- a copy of a witness statement from Occupant A describing multiple negative interactions with Tenant S.A. from March 04, 2017, to May 15, 2017, including an incident , where Tenant S.A. threatened war against her if she did not change her flooring on April 11, 2017, another incident where Tenant S.A. came to the occupant's unit regarding noise on April 20, 2017, making various threats and another incident when Tenant S.A. shouted at her from his balcony and went to her unit to confront her until she went inside and then Tenant S.A. was banging on the occupant's door repeatedly and calling her a liar which resulted in the occupant calling the police in May 2017;
- copies of witness statements for two incidents in late 2016, from a member of the Strata Council where she witnessed the tenant directly challenging contractors attending the residential premises regarding noise and other issues;
- a copy of a description of personal interactions that the landlord has had with Tenant S.A. including two recent incidents that occurred in December 2017, that Tenant S.A. notified the landlord of, where he challenged an agent of the Strata

Council taking pictures of the building on one occasion and confronted another occupant having a party, instructing them to quiet down in one minute or Tenant S.A. would call the police; and

- an audio recording of the landlord personally serving the One Month Notice to the tenants on December 31, 2017, in which Tenant S.A. states that on the previous night they confronted another occupant about a party the occupant was having and told them to quiet down or he would call the police;

The tenants submitted into evidence:

- a copy of a police report for an incident that occurred on May 11, 2017, which states that the complainant alleges that Tenant S.A. was yelling at her about the noise she was making. Tenant S.A. stated in the report that he was just trying to handle it “at the lowest level” and bringing his complaints directly to the occupant. The report further states that the police spoke with Tenant S.A. and advised him to bring noise related issues to the police or to Strata Council instead of directly to Occupant A so that they could be documented;
- medical records for Tenant S.A. regarding physical and mental conditions.

The landlord testified that he has received information from the Strata Council about the conduct of Tenant S.A. challenging trades people and other occupants about noise issues. The landlord stated that he personally delivered a letter to the tenants on May 02, 2017, about Tenant S.A.’s conduct and had a meeting with him on May 16, 2017, about the Tenant S.A. continuing to interfere with other occupants, during which the landlord requested for the tenants to go through the proper channels when dealing with any noise related issues instead of confronting other occupants directly. The landlord stated that the conversation with Tenant S.A. on May 16, 2017, is referred to in an e-mail to the Strata Council on May 17, 2017, which was provided in evidence.

The landlord submitted that other occupants have been uncomfortable in confrontations with Tenant S.A. and that following the meeting the landlord had with Tenant S.A. on May 16, 2017, Tenant S.A.’s conduct towards other occupants continued in the same way resulting in the landlord sending a final warning letter to the tenants in August 2017. The landlord referred to a letter from the Strata Council in evidence that was received by the landlord in November 2017 detailing all of the complaints directed towards Tenant S.A. from May 2017 to July 2017. The landlord stated that his own personal interactions with Tenant S.A., submitted into written evidence, further demonstrate a pattern of unacceptable behaviour.

The landlord submitted that the tenants were given an opportunity to meet with the Strata Council and that after the hearing the Strata Council issued a letter to the tenants and the landlord indicating that they saw no reason to have complaints about Tenant S.A. withdrawn.

The landlord stated that during an incident on April 20, 2017, Tenant S.A. opened the door of Occupant A's unit to complain about the noise coming from within and acted in a threatening manner telling Occupant A that if she called the police it would be worse for her, that he can hear every step that she makes and knows when she wakes up, that she should give him money for a hotel if renovations are going to continue and that she is on thin ice.

Tenant S.A. disputed the quality of the complaints that have been made against him but admitted that there has been friction with other occupants. Tenant S.A. maintained that he has had interactions with other occupants and contractors but that he just asked for noises to abate. Tenant S.A. stated that no notices for work to be completed, and which resulted in noise issues, were presented to the tenants most of the time. Counsel submitted that the complaints against Tenant S.A. regarding his conduct towards other occupants are only allegations.

Tenant S.A. testified that he did not swear at the child and tell them to go to a playground. The tenant states that he was eating breakfast and Occupant B was smoking on the adjacent balcony and he only told her to go to a park to smoke. Tenant S.A. maintained that he did not confront Occupant B further

Regarding the incident where Tenant S.A. went to Occupant A's unit above him and opened the door, Tenant S.A. stated that he knocked first but they could not hear him. Tenant S.A. stated that he did not enter the unit and did not barge into anyone's apartment.

Tenant B.M. testified that she is in the rental unit every day and that the interaction regarding Tenant S.A. telling someone to go to the playground did not happen as Occupant B states. Tenant B.M. submitted that it is out of character for Tenant S.A. to swear and that he does not pound on the walls. Tenant B.M. states that Tenant S.A.'s voice is louder than average, he is not yelling.

Counsel stated that the police did attend to the residential premises in May 2017 due to Occupant A having called 911 regarding Tenant S.A. and that the police requested

Tenant S.A. to speak to Strata Council about noise complaints but was not in any trouble.

The landlord responded to the tenants' testimony and stated that the police were called in May 2017 because Occupant A felt her safety was at risk. The landlord stated that the tenants were told many times to settle disputes through proper channels. The landlord maintains that Tenant S.A. has shown a pattern of conduct from disruptive to menacing which have not changed despite multiple warnings from the landlord.

Counsel submitted that Tenant S.A. having conversations with other occupants is not grounds for a notice to end tenancy and that the claims against Tenant S.A. are exaggerated. Counsel referred to a previous RTB decision in which a mother and teenage son were getting in fights with other people and the arbitrator did not find grounds to end the tenancy based on a One Month Notice in that circumstance.

Counsel stated that there have been no issues since July 18, 2017, and that in the meeting with the Strata Council in December 2017 the issues were resolved. Counsel submitted that incident where the tenant talked to another occupant about noise levels from their party did not result in a complaint.

Counsel maintained that there are multiple levels of hearsay and that, due to the anonymous nature of the majority of the complaints, they are not able to ask questions of the witnesses which impacts the credibility of the statements made against Tenant S.A. Counsel further stated that the landlord has not been harmed by the incidents involving Tenant S.A. and has not been fined by Strata Council. Counsel contended that Tenant S.A.'s bi-polar issue should be taken into account and that Tenant S.A. has made efforts to resolve their behaviour and the complaints have stopped. Tenant S.A. testified that he had nothing but positive interactions for a long time at the residential premises until Occupant A moved into the unit above his and the problems began.

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

January 09, 2018, and since I have found that the One Month Notice was served to the tenants on December 31, 2017, I find the tenants have 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.

I have reviewed all documentary evidence including the affirmed testimony and I find, based on a balance of probabilities, that Tenant S.A. has unreasonably disturbed other occupants.

I find that it is undisputed that Tenant S.A. has had multiple negative interactions with Occupant A which is supported by the police report, Occupant A's witness statement and Tenant S.A.'s testimony. Although the versions of the events differ between the two parties, I find that it is undisputed that Tenant S.A. was the instigator in each of the incidents as Tenant S.A. confirmed the interactions took place in a manner similar to what Occupant A described, with either Tenant S.A. intercepting Occupant A in the common property or Tenant S.A. going to Occupant A's unit, knocking and opening the door.

I find that Tenant S.A. has not disputed that he had concerns with noise levels from Occupant A's unit and it would be reasonable to conclude on a balance of probabilities that if he was addressing Occupant A about these concerns, it would not have just been a friendly conversation. I find that Occupant A's version of the multiple events that occurred regarding Tenant S.A.'s demeanour matches with Occupant B's unrelated complaint, the anonymous complaints and the witness statement of the Strata Council representative who saw Tenant S.A. confronting contractors about noise issues.

I find that Occupant A's witness statement indicating that Tenant S.A. yelled at her from his balcony on multiple occasions and has banged on the walls when upset with noise issues is consistent with the anonymous complaint regarding Tenant S.A. yelling from his balcony and banging on walls on July 18, 2017.

Although Tenant S.A. states that Occupant B's complaint is anonymous, I find that Strata Council has listed the unit number involved in their written response to the tenants regarding the hearing that took place with the tenants. I find that Tenant S.A. knew about the incident and responded to it in his testimony with just a slightly different version of the events and I find it reasonable to conclude that the witness is not anonymous to him. I find that Occupant B's description of Tenant S.A.'s threatening demeanour matches with Occupant A's version of what occurred in her interactions with

Tenant S.A. Although Tenant S.A. has described these interactions with other occupants as polite and respectful, I find it unreasonable to conclude that if the conversations were as polite as the tenants say they were, that multiple occupants would feel compelled to complain to the Strata Council or to call the police.

I find the credibility of the tenants' version of all events described is impacted by the tenants' decision to claim on their Application that they only received the One Month Notice on January 02, 2018, which they claim was posted to their door when there is evidence to prove they received the One Month Notice in person on December 31, 2017. For the above reasons, based on the above and a balance of probabilities, I find that Occupant A and Occupant B were unreasonably disturbed by Tenant S.A.

I find that the tenants were instructed by their landlord, by Strata Council and by the police regarding the reasonable way to address any noise related issues they had. Based on the audio recording in evidence and in Counsel's submissions, I find that it is undisputed that Tenant S.A. confronted another occupant regarding noise coming from a party the day before receiving the One Month Notice and that Tenant S.A. continues to confront other occupants despite numerous attempts verbally and in writing to have him bring these concerns directly to Strata Council, to the landlord or to the police.

Taken in context with the multiple requests from the landlord, the police and Strata Council, including a hearing that had just recently occurred with them for these same issues, I find that Tenant S.A.'s actions to directly confront another occupant about their noise and to threaten to call the police was unreasonable and that the occupant was unreasonably disturbed by Tenant S.A.'s actions. Although Counsel stated that there was no complaint regarding this incident, I find the *Act* does not require someone to file a complaint in order for them to be unreasonably disturbed.

For the above reasons I find the landlord has sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason, the Application to set aside the One Month Notice is dismissed.

Section 55(1) of the *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 as long as the notice to end tenancy complies with section 52 of the *Act*. I find that the One Month Notice is in compliance with section 52 of the *Act*.

For these reasons, I grant a two day Order of Possession to the landlord. If the tenants have paid the monthly rent for March 2017. The landlord is at liberty to enforce the Order of Possession right away and refund any unused portion of March 2018 rent or to allow the tenants to stay until the end of March 2018.

Conclusion

I dismiss the Application to cancel the landlord's One Month Notice dated December 31, 2017, without leave to reapply.

I grant an Order of Possession to the landlord **effective two days 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: March 19, 2018

Residential Tenancy Branch