



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY GROUP LANDS CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This decision pertains to the Tenant's application for dispute resolution made on May 18, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), and a monetary order for recovery of the filing fee.

The Tenant and the Landlord's Agent and another employee attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties did not raise any issues of service and the Tenant acknowledged having had the opportunity to review the Landlord's package of documentary evidence.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution 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 issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Notice, pursuant to section 47 of the Act?
2. Is the Tenant entitled to a monetary order for recovery of the filing fee?
3. If the Tenant is unsuccessful in cancelling the Notice to End Tenancy is the Landlord entitled to an order of possession, pursuant to section 55 of the Act?

Background and Evidence

The Landlord testified that on March 9, 2018, there was a break-in at the apartment building in which the rental unit is located. The police and the building's resident manager (S.D.) did a check of the underground parking and storage units. A female—who turned out to be the Tenant's girlfriend—was found to have keys to the building on her. (A copy of an internal email correspondence of the Landlord regarding the above was submitted into evidence.)

The Landlord testified that the written tenancy agreement (the "Agreement") a copy of which was submitted into evidence) contains a clause whereby no person is allowed to occupy the rental unit other than the Tenant. Anyone other than the Tenant who resides in the rental unit for a period in excess of fourteen cumulative days in any calendar year will be considered to be an occupant. Any such occupant is required to obtain permission from the Landlord to reside in the rental unit.

The Landlord issued a written notice on March 13, 2018, to the Tenant reminding him of the no additional occupant clause in the Agreement; the letter states that the additional occupant (the Tenant's girlfriend) was found to have a set of keys to the building. It also refers to section 30 of the Agreement which notes that anyone found to have unauthorized possession of a key and is on the property will be treated as a breach of a material term of the Agreement. (A copy of the letter dated March 13, 2018, was submitted into evidence by the Landlord.)

The Tenant's girlfriend filled out an application to rent but the application was not completed, the sections regarding employment and income being left blank. On April 27, after completing a rental unit inspection, the Landlord advised the Tenant that they would not approve the girlfriend's application as it was not completed. The Tenant came into the office to pay rent for May, picked up a new application, and never returned it.

The Landlord testified that they issued the Notice on May 15, 2018, with an effective date of June 30, 2018, on the following grounds:

- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and seriously jeopardized the health or safety or lawful right of another occupant of the Landlord; and,

- there is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given.

On April 30, 2018, another occupant of the residential property sent a handwritten complaint letter to the Landlord indicating that the Tenant “has been building something, sawing, drilling, hammering April 29/30 day and night and did not respond to bangs on the ceiling to be quiet.” The letter indicates that this was not the first time they were making noise.

On May 10, 2018, the building’s resident manager sent an email to a Landlord’s representative (L.B.) indicating that they received a complaint from another occupant regarding the Tenant and his girlfriend “fighting and screaming and yelling and banging around, starting around 11:30 [p.m.].” The police attended but the girlfriend had left. The fighting, screaming, yelling and banging around resumed at 4:20 a.m. A copy of the occupant’s complaint letter was submitted into evidence.

In addition to the two above-noted complaints from two separate occupants, a third occupant of the building also complained to the Landlord. A copy of that tenant’s letter to the Landlord states that “I am having noise issues with my neighbour who resides in suite [rental unit]. Quite often I come home to [him] being extremely loud, either with electronics, or saw-like noises.”

The Landlord testified that the noise issues “have been consistent for the last two months.” They further testified that the ongoing noise issues, in particular, the fighting and screaming, has caused many of the building’s tenants to be fearful of the Tenant and his girlfriend, and is of particular concern to those tenants with small children.

The Landlord also testified that the Tenant frequently leaves his parking stall and storage unit in an untidy and unsanitary state. Photographs of the parking stall were submitted into evidence.

The Tenant did not address or respond to the Landlord’s testimony or submissions regarding the multiple complaints of noise and fighting. He testified that he was unaware of the other tenants’ complaints regarding the noise and fighting. The Tenant testified that the mess to which the Landlord refers were pop bottles, and which were all cleaned up by 9 a.m. on an unspecified date (but, I infer, the date on which the Landlord’s photographs were taken).

Finally, the Tenant testified that his “girlfriend” is his caregiver. I asked the Tenant whether the occupant is his girlfriend or his caregiver. The Tenant testified that “she is my girlfriend *and* a caregiver.” The Tenant is on full disability and occasionally requires assistance in getting up.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. The Notice indicated that the Landlord was ending the tenancy for multiple causes.

Regarding the issue of an unsanitary and untidy parking stall and storage unit, while the Landlord provided photographs of a rather messy parking stall, they did not provide me with evidence that demonstrated such a mess “seriously jeopardized the health or safety” of another occupant or the Landlord. The Landlord referred to a fire inspection in which the messiness was brought to the Landlord’s attention. However, no documentary evidence was submitted regarding this. Given that there is insufficient evidence proving that the untidy parking stall and storage unit seriously jeopardized anyone’s health or safety, I find that the Landlord has failed to establish this as a ground for ending the tenancy.

Regarding the breach of the material term, there is oral and documentary evidence that establishes that there was a second occupant (the girlfriend), who had an unauthorized copy of keys, and who, I infer from the evidence, was residing in the rental unit as early as (if not earlier than) March 9, 2018, and up to (and possibly later than) May 15, 2018. Added to this is the evidence of the girlfriend’s attempt to apply for a tenancy, which was declined. I infer from all of this that the girlfriend was a second, unauthorized occupant of the rental unit.

The Landlord warned the Tenant on March 13 about the unauthorized occupant, and gave the Tenant approximately two months to correct the breach, which he did not. Two months is more than a reasonable time to correct the issue.

Taking into consideration all the oral and documentary evidence presented before me,

and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving a ground on which the Notice was issued, namely, that the Tenant breached a material term of the tenancy agreement and did not correct the breach within a reasonable time after written notice to do was issued.

Regarding the ground that the Tenant (or the girlfriend) significantly interfered with or unreasonably disturbed another occupant, the Landlord testified and submitted documentary evidence demonstrating that the Tenant and/or his girlfriend have, on at least three separate occasions, significantly disturbed other occupants of the building.

One occasion involved two separate fights, once before midnight and again shortly after 4 a.m., on May 10-11, 2018. The police had to be called.

On two other occasions, the Tenant disturbed two other occupants of the building by sawing, drilling and hammering day and night. The Tenant did not dispute the Landlord's testimony and submissions regarding these events.

Occupants should not be subject to the sounds of construction in the middle of the night, nor should they be subject to the unsettling sound of violent fighting in the wee hours of the morning. And, neither should the occupants' small children. Between the fighting and the sounds of home-based construction, I find that multiple tenants were unreasonably disturbed.

Taking into consideration the unchallenged testimony of the Landlord and the documentary evidence, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the ground on which the Notice was issued, namely, that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant. As the Landlord has met their onus of proving two grounds on which they issued the Notice, I dismiss the Tenant's application for an order cancelling the Notice without leave to reapply. The Notice, dated May 15, 2018, and effective June 30, 2018, is upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the One Month Notice to End Tenancy for Cause issued by the landlord on May 15, 2018 complies with the requirements set out in Section 52.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Conclusion

Based on the above, the Landlord is entitled to an order of possession effective two days from the date on which the order is served on the Tenant, pursuant to section 55 (1) of the Act. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I dismiss the Tenant's request for a monetary order for recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: July 4, 2018

Residential Tenancy Branch