



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47 of the *Act*.

The tenant appeared with his advocate SS (“the tenant”). The landlord appeared with his wife and agent RP (“the landlord”). Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The tenant filed an Amendment to an Application for Dispute Resolution dated August 28, 2018 changing his address for service.

The tenant filed a second Amendment to an Application for Dispute Resolution dated September 9, 2018 stating he received a new Notice to End Tenancy on September 1, 2018 and attaching “many pages of new evidence...”.

Attached to the second Amendment is a letter from the tenant stating the tenant filed the attached materials as evidence for this hearing.

The landlord acknowledged receipt of the tenant's Notice of Hearing, Application for Dispute Resolution, Amendments and materials. No issues of service were raised. I find the landlord was served under section 89.

Both parties were informed of Section 55 of the *Act* which requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause 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 in compliance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the One Month Notice under section 47 of the *Act*?

If the tenant's application is denied, is the landlord entitled to an order of possession under section 55 of the *Act*?

Background and Evidence

The parties submitted considerable evidence going back to 1998. I do not refer to all the evidence in this decision. I make reference only to some relevant testimony and documents complying with the Rules of Procedure.

The landlord testified the parties entered into a tenancy agreement beginning in 1990. The tenancy is month-to-month and monthly rent is \$830.00 payable on the first of the month. The tenant paid a security deposit of \$200.00 at the beginning of the tenancy which is held by the landlord.

The landlord personally served a One Month Notice on the tenant on August 1, 2018 with an effective date of October 1, 2018. The tenant acknowledged service.

A copy of the One Month Notice was submitted in evidence. The Notice is in the standard form used by the RTB except that, in the heading of the document, the word "One" is crossed out and the word "Two" is hand written. The landlord testified he made this change with the sole purpose to give the tenant extra time to move out. No other changes were made to the Notice.

The effective date in the One Month Notice is October 1, 2018, amended to October 31, 2018.

The tenant filed an Application for Dispute Resolution on August 10, 2018.

In the One Month Notice, the landlord checked several grounds for issuance of the Notice. However, the landlord submitted evidence with respect only to the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
Significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
Adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant

The landlord explained in written submissions and in oral affirmed testimony that he has owned the 20-unit apartment building in which the unit is located for over thirty years. He testified that the tenant has been a resident since before 1990.

The landlord testified that elderly people primarily occupy the building. Throughout the tenancy, the landlord stated he has received countless complaints from other occupants of the building about the tenant. Sometimes these complaints were in writing, but, more frequently, they were made in phone calls to the landlord. The landlord's wife provided affirming evidence of the many complaints.

The landlord testified that he is now 87-years old and his son, who lives in the building, is now the building manager.

The parties acknowledged that in 1998 the landlord issued a One Month Notice regarding the tenant and an arbitrator ordered the Notice cancelled. A copy of this decision was submitted.

The landlord stated that his relationship with the tenant deteriorated over the term of the tenancy. The landlord stated the cause was complaints about the tenant from many of the tenants, the failure of the tenant to change his behaviour to address the complaints, and the eventual refusal of the tenant to communicate with the landlord or the building

manager. The tenant's behaviour has become more difficult and intolerable in the recent year.

The tenant acknowledged difficulties in the tenancy and in his relationship with the landlord and the building manager. However, he denies any responsibility for the events described by the landlord. The tenant stated that, in any event, anything he did was not serious enough to amount to reasons to evict him. He also denied receiving any sufficient notice from the landlord that there were complaints about him. However, during his testimony, the tenant acknowledged receiving a notice from the landlord about six months previously warning him that eviction proceedings would be started if certain behaviour of the tenant did not change.

The tenant provided testimony at the hearing and submitted an advocate's letter outlining his reasons why the One Month Notice should be set aside.

The parties submitted many documents. The evidence outlined the history of the tenancy relationship going back to his first noise grievances in 1995. Throughout the tenancy, the tenant has had many complaints about the building and other tenants. Over time, the documents evidence increasing complaints about the tenant himself.

The landlord testified as follows as the reasons for issuance of the Notice:

- The tenant complains constantly to the landlord about imagined noise and personal disturbances, such as the sound of toilets in other units, heat, odour, pests and noise.
- The landlord promptly investigated the tenant's noise complaints and found them groundless.
- The tenant complains constantly about the occupants of the unit immediately below his. The tenant deliberately created noise to retaliate against the downstairs neighbours, such as by vacuuming on one occasion for three hours.
- The tenant is rude and verbally abusive to other tenants.
- The landlord testified the tenant is belligerent, defiant, unwilling to compromise, and "impossible" to live with.
- The landlord, the landlord's son (who lives in the building), and the building manager have verbally warned the tenant on multiple occasions to stop his behaviour or he will be evicted.
- The tenant's behaviour has worsened over time particularly in recent months.

The tenant's key submissions are as follows:

- Because of the poor infrastructure of the building, the tenant hears toilets flush in neighbouring units, doors opened and closed, and nearby voices. This has caused disturbance to the tenant resulting in his justified numerous oral and written complaints to other tenants and to the landlord.
- Conditions in the building are sometimes unbearable; these conditions include uncomfortable heat, the presence of insects, and disagreements over window opening/closing in common areas.
- The various occupants of the downstairs unit are responsible for many of the tenant's justified complaints. The tenant denied retaliatory behaviour targeting these tenants.
- The tenant denied engaging in behaviour designed to irritate other tenants.
- The tenant described himself as a "model tenant". He submitted a letter dated July 2018 from a long-time friend and a letter of August 7, 2018 from another tenant in the building which described him as a "considerate and cordial neighbour". Other submitted letters described the tenant as quiet and tidy.
- The tenant argued that, as in a previous arbitration (a copy of which was submitted), the circumstances described by the landlord in the hearing are more "analogous to neighbours arguing with each other about the noise".
- As mentioned earlier, although the tenant acknowledged receipt of a warning letter from the landlord six months ago, the tenant stated this is not adequate notice warning him about of any behaviour which could lead to notice of termination of tenancy.
- The tenant testified he has "isolated memory disorder", a condition which is known to the landlord, and "sufficient warning for the average person may not be sufficient for [the tenant]". The tenant did not produce current medical reports or submit admissible evidence in this regard.

A letter from LT dated March 5, 2017 was submitted in evidence. LT wrote that she was the tenant in the downstairs unit until she moved out, largely because of the tenant's behaviour. LT wrote about the tenant's "bossy and intrusive" behaviour and incessant complaining. For example, she wrote that the tenant complained about her use of the bathroom fan, the sound of her television, and the noise of the vacuum cleaner. He dropped heavy objects on the floor, startling her. He pointed his finger in her face and told her not to use the bathroom fan anymore. LT wrote she felt "intimated and not at home".

A letter dated July 2018 was submitted in evidence by PB, the current tenant of the downstairs unit which states in part as follows:

On Feb. 23 [2018] I called [landlord] regarding [tenant] vaccuming for 3 hours straight back & forth/off on, on the floors....

[tenant] works on his vehicles in the parking lot. Reving his motor & running it for long periods of time, the exhaust is terrible & the reving of the vechiles are often. Out side my door, to the patio.

I have met him on the sidewalk & been on the proper side to pass him & he takes up the whole sidewalk being very intimating, makes me off the sidewalk, feeling very conserved for my well being.

[as written]

The landlord submitted a written statement to the hearing which states in part as follows:

Since his retirement the occurrences of conflict have become more frequent and now almost constant. He had been belligerent and threatening to the manager. One occasion when I had a disagreement with him, he came within 6 inches of my face with clenched fists at this side and a fierce angry countenance trying to make me push or hit him, in which case he could claim assault. I walked away. He called the police and claimed I threated him.

Analysis

The onus is on the landlord to establish the cause upon which the One Month Notice is based.

Rule 6.6 of the Rules of Procedure states in part as follows:

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.

Based on the testimony presented at the hearing, along with the written submissions, it is evident that multiple incidents have occurred between the tenant and other occupants of the building, as well as the landlord and the building's management.

The question is therefore whether these incidents meet the requirements of section 47.

I have considered all the evidence and testimony. On a balance of probabilities, I find the landlord has established grounds for the issuance of the One Month Notice.

I find that the tenant has significantly interfered with and unreasonably disturbed the landlord and other occupants of the residential property to the extent that the landlords were justified in issuing their One Month Notice. As I have made this finding with respect to the first ground in the Notice, I will not examine the additional ground for the issuance of the Notice.

I therefore dismiss the tenant's application to cancel the One Month Notice.

I determine the One Month Notice form complies with section 52. Pursuant to section 55(1), the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed. In consideration of all the evidence and submissions, I find the landlord is entitled to an order of possession effective October 31, 2018.

Conclusion

The tenant's application to set aside the One Month Notice is denied.

I grant the landlord an order of possession which is effective October 31, 2018.

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 to 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: October 24 2018

Residential Tenancy Branch