



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, and for the recovery of the filing fee paid for this application.

The Landlord and Tenant were both present for the duration of the teleconference hearing. Both parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served as required.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

During the hearing, the parties clarified that the second Applicant named on the Application for Dispute Resolution was not a party to this dispute, as she had moved out of the rental unit. Therefore, the Application for Dispute Resolution was amended to remove the second Applicant, pursuant to Section 64(3)(c) of the *Act*.

At the outset of the hearing, the Tenant requested an adjournment due to a medical issue that made speaking difficult. The request was denied due to the urgent nature of

the One Month Notice in dispute, and as the Landlord was not in agreement to an adjournment. The Tenant was provided with time to speak slowly.

As stated by Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, unrelated claims may be dismissed at the discretion of the arbitrator. Therefore, I exercise my discretion to dismiss the Tenant's claim for an order to comply in order to focus on the urgent matter of the One Month Notice. This decision will address the Tenant's application to cancel the One Month Notice only.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on February 1, 2018. Monthly rent is \$1,100.00. A security deposit of \$550.00 and a pet damage deposit of \$550.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The agreement was signed between the Landlord, the Tenant and the co-tenant who has since moved out of the rental unit.

The Landlord testified that the Tenant and co-tenant were served with a One Month Notice on August 28, 2018 by posting the notice on their door. The Tenant confirmed receipt of the One Month Notice on August 28, 2018.

The One Month Notice was submitted into evidence and states the following as the reason for ending the tenancy:

- 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
- 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 another occupant
 - Jeopardize a lawful right or interest of another occupant or the landlord

Further details of the cause were provided as follows:

- Illegal drugs being used/sold on property
- Verbal and physical abuse towards each other and other tenants on the property
- Pets and litter not being cleaned leading to hygiene issues
- Disturbing the peace in the middle of the night disturbing other tenants on the property

The effective end of tenancy date of the One Month Notice was stated as September 30, 2018. The Landlord stated that the other tenant on the tenancy agreement vacated the rental unit approximately two weeks after receiving the One Month Notice.

The Landlord provided testimony that there has been ongoing fighting between the tenants, causing concerns for other residents of the property as well as the Landlord. The Landlord stated that the Tenant's boyfriend moved into the rental unit temporarily and there have also been loud arguments between them, into the early hours of the morning. The other residents on the property have reported their concerns with the noise to the Landlord.

On one occasion, the Tenant sent a text to the Landlord at 2:00 am due to an issue with the co-tenant at the time. Due to the ongoing issues between the two tenants, the Landlord stated that she sat down with them to try to resolve the issues, but noted that the issues continued.

The Landlord also stated that the other residents of the property have expressed their concern over the ongoing issues. The Landlord submitted a letter from the tenants that live above the rental unit in dispute. The letter, dated September 16, 2018, describes physical confrontations between the Tenant and co-tenant and that the police have been called many times, leading to a lack of comfort and safety in their home. The letter also notes loud arguments between the Tenant and her boyfriend, often late into the night.

A second undated letter submitted by the Landlord, is from another resident of the rental property, who notes incidents occurring between March and September 2018. The incidents mentioned include numerous occasions of the Tenant not picking up feces from her dog, as well as physical and verbal altercations between the Tenant and her boyfriend, which are loud and disruptive, and often late into the night.

A third letter, dated September 17, 2018, is from the co-tenant who has since moved out. The co-tenant notes an altercation between the Tenant and one of the other tenant on the property. The letter also notes abusive text messages from the Tenant and other conflicts between them that arose during the time they were living together.

The Landlord testified regarding conflict that occurred between the Tenant and co-tenant related to the litter box of the co-tenant's cat and the Tenant's complaints that the litter box was not being cleaned regularly.

The Landlord also stated that the other tenants on the property expressed concern that the Tenant was not picking up the feces from her dog and it was causing issues on the property. The Landlord provided testimony that she has witnessed this when visiting the property.

The Landlord stated that due to the concern with picking up after the dog, the Landlord signed a pet contract with the Tenant on April 2, 2018. The contract was signed by the Landlord and the Tenant and had 13 clauses, including that pet waste must be picked up immediately and properly. The pet contract was submitted into evidence and the Landlord testified that there continues to be issues with the Tenant not picking up after her dog right away.

The Landlord stated that she tried to resolve the issues between the tenants, as she was not sure what else to do and was hearing both sides of the disagreements and arguments. However, after sitting down with the tenants as the issues still continued, she served the Tenants with a One Month Notice. The Landlord also submitted that the issues have continued after the co-tenant moved out, and stated that the arguments and disruptive behaviour with the Tenant and the other property residents, as well as between the Tenant and her boyfriend remain a concern.

The Tenant provided testimony that she picks up after her dog on a regular basis and only occasionally does she not do so. She was in agreement that a pet contract was signed with the Landlord on April 2, 2018.

She provided further testimony that she has not initiated any arguments with other tenants and that one of the other residents initiated an argument that resulted in the Tenant calling the police for her own protection.

The Tenant submitted that the incidents described in the letters submitted by the Landlord are not accurate and not a representation about what has actually occurred. She stated that there have been no physical altercations between herself and her boyfriend, or any other residents on the property.

While there have been a few disagreements, the Tenant stated they have not been loud and that she remains aware of the noise bylaws, with no loud noises after 10:00 pm. She also notes that the insulation in the home is poor, causing sound to transfer easily between the units in the home.

The Tenant submitted emails to the Landlord into evidence in which she notes that she found illegal drugs in the home, informs the Landlord regarding her co-tenant not cleaning the cat litter box and in which she describes a hostile environment between the two of them.

The Tenant stated that she was worried about drug use in the home and found drugs that may have belonged to her co-tenant. She also noted an incident when the co-tenant brought home multiple people late at night that were behaving inappropriately. As the Tenant was concerned for her safety, she stated that this was the one time she contacted the Landlord by text message late at night. She also noted that on this same evening, the guests of her co-tenant slept outside, which may have upset the other residents, but due to a situation created by the co-tenant, not herself.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 47(4) of the *Act* which states that a tenant may dispute a One Month Notice within 10 days. As the Tenant received the One Month Notice on August 28, 2018 and applied to dispute the notice on August 29, 2018, I find that she applied to dispute the notice in time.

I also refer to *Residential Tenancy Policy Guideline 13: Rights and Responsibilities of Co-tenants* which defines co-tenants as two or more people under the same tenancy agreement. I accept the tenancy agreement submitted into evidence by the Tenant, which shows the Tenant and the co-tenant were under the same tenancy agreement.

As such, I find that both tenants were part of this tenancy and therefore it is not relevant to attempt to distinguish between the actions of the tenants. A One Month Notice can end a tenancy, regardless of whether the issues were caused by one tenant or multiple co-tenants on one tenancy agreement.

Therefore, I find sufficient evidence before me, from both parties, to demonstrate that there were disruptive behaviours within this tenancy that were causing concern for the Landlord and other residents of the property. I find the letters from the other residents on the property to be compelling evidence regarding disruptive behaviour that is occurring. I also find the email and text message evidence to demonstrate the conflicts that existed between the tenants.

I also note that the co-tenant accepted the One Month Notice and vacated the rental unit, thus accepting that the tenancy ended. Had the Landlord chosen to do so, a new tenancy agreement could have been made with the Tenant, but the Landlord stated her intention to end the tenancy for both tenants.

As stated in Section 47 of the *Act*, a One Month Notice may be provided to end a **tenancy**. Therefore, when there are co-tenants, a One Month Notice ends the tenancy for all of the co-tenants.

Due to the evidence before me, including letters from other residents regarding disruptive behaviour, as well as the testimony of the Landlord, I accept that the reasons for the One Month Notice to End Tenant for Cause are valid. I also find that the co-tenant accepted that the tenancy had ended by moving out. Therefore, I dismiss the Tenant's application to cancel the One Month Notice.

Upon review of the One Month Notice submitted into evidence, I find that it complies with Section 52 of the *Act*. Therefore, pursuant to Section 55(1) of the *Act*, I award the Landlord an Order of Possession effective October 31, 2018 at 1:00 pm.

As the Tenant was not successful in her application, I decline to award the recovery of the filing fee paid for this Application for Dispute Resolution.

Conclusion

The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **on October 31, 2018 at 1:00 pm**. This Order of Possession must be served on the Tenant. Should the Tenant 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: October 23, 2018

Residential Tenancy Branch