



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 tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

Both parties 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.

As the tenant confirmed that he received the landlord's 1 Month Notice handed to him by the landlord on July 29, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent to the landlord by the tenant by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

During the hearing, the landlord requested that I attempt to contact the landlord's sister as a witness. Although the landlord said that her sister, who had written one of the letters the landlord entered into written evidence was not expecting to be called as a witness, I attempted to have the operator contact the tenant's sister. I was unsuccessful in connecting with the operator, despite numerous attempts to do so before the end of this 56 minute hearing. The landlord said that this was alright as it was likely that her sister was at work and would not be at the telephone number that the landlord gave me for attempting to call this witness.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy for the basement suite in the landlord's home commenced on February 1, 2017. On March 9, 2017, the parties signed a month-to-month tenancy agreement whereby the tenant pays \$600.00 in monthly rent, payable in advance on the first of each month. The landlord continues to hold the tenant's \$300.00 security deposit paid on March 9, 2017. The parties agreed that the landlord has accepted the tenant's September 2018 rent payment, pending the outcome of this hearing.

In the one-page non-standard tenancy agreement the parties signed, the tenant agreed to the inclusion of the following stipulations:

Quiet after 10:30, turning his music or TV down to not disturb the other house mates.

A (the landlord) reserves the right to evict S (the tenant) with 30-60 days notice, if there is dispute or conflict that cannot be resolved, or if there is violation of this agreement.

The landlord first attempted to issue a 1 Month Notice by way of an email on July 1, 2018. In that email, the landlord advised the tenant that she had been discussing her need to have the tenant vacate her basement suite since the winter. The landlord maintained that the tenancy had been "temporary" and that she needed the tenant to vacate the premises by August 1, 2018. In that email, the landlord cited two specific reasons for ending this tenancy. The landlord first noted that she was upset that the tenant had lied to her before she agreed to rent the suite to him when he told her that he was attending a mental health facility on weekends to seek treatment. In reality, the tenant was serving time in prison on weekends. When confronted about this, the landlord maintained that the tenant continued to lie about this and conceal his true whereabouts on the weekends. The second reason cited in the landlord's email was that the landlord claimed that he had touched his private parts while speaking with her and "disrespected the rules established in writing" when he moved into the rental unit. The landlord noted that she had given him six months of verbal notice that she wanted him to find another place to live and was now committing this to writing.

When the tenant received this notice, he advised the landlord that a notice to end tenancy had to be issued on the proper Residential Tenancy Branch (RTB) form.

The landlord subsequently issued a 1 Month Notice on the proper RTB form on July 29, 2018. The 1 Month Notice entered into written evidence by the parties identified the following reasons for ending this tenancy by September 1, 2018:

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 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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

At the hearing, the landlord testified that there was no illegal activity that had been happening at the tenant's suite. The landlord accepted that this tenancy could not be ended for the last two of the reasons cited in the 1 Month Notice of July 29, 2018.

In her written evidence and in her sworn testimony, the landlord raised concerns about the tenant's concealment of his weekend stays in prison. The landlord's written evidence also cited concerns about the tenant playing loud music and singing, especially late at night, about the tenant talking loudly to his dog, about the tenant having burnt her dog's eyelashes and an allegation that the tenant had entered her suite on a number of occasions without knocking to report problems with his rental suite. The landlord also entered into written evidence statements from her sister who stayed with her in mid-June 2018 for two nights and who was disturbed by the noise coming from the tenant's basement suite at night. The landlord also entered into written evidence a letter from a friend who reported the extent to which the tenant's behaviours were affecting the landlord. The landlord complained that the tenant's "constant vocalization," much of which was directed at his dog was also disturbing to her.

The landlord gave undisputed sworn testimony that between the time that she issued the emailed notice to end this tenancy on July 1, 2018 and July 29, 2018, the date of the official 1 Month Notice on the RTB approved form, there were a few instances where

the tenant's music and loudness continued late into the night. The landlord said that since issuing the official 1 Month Notice the tenant had been generally quiet except for one incident in August when she had to call the police to intervene.

In her written evidence and her sworn testimony the landlord maintained that she feels unsafe and uncomfortable with the tenant living in her house. She said that she has repeatedly asked the tenant to turn down his music, but until very recently the tenant has continued to play music or make other noise in the basement below where she lives. She claimed that there had been an ongoing dialogue with the tenant about her concerns regarding this tenancy, sometimes assisted by his uncle, who acted as the tenant's assistant and provided some sworn testimony at this hearing.

At the hearing, the landlord testified that the person who witnessed the tenant burn the eyelashes of her dog was unwilling to come forward to support the landlord's allegations in this regard. Without any such first-hand evidence, the landlord recognized that she would be unable to end the tenancy for that reason stated in her written evidence.

The landlord also gave sworn testimony and provided written evidence that the tenant had put his hands down his pants to touch his private parts when speaking to her on one occasion. When confronted about this, those supporting the tenant at the time maintained that this may have been an unconscious movement that the tenant was not even aware of at the time. The tenant adamantly denied that any such incident occurred.

The landlord also entered into written evidence a document prepared by the tenant's probation officer which she requested as a means of reporting the concerns she had raised regarding the tenant's continued residency in her rental suite. Most of this document involved the concerns that the landlord had been raising regarding the tenant's concealment of his prison stays on weekends and her request that the probation officer assist in finding the tenant alternative accommodation. Very little of this document had any direct relevance to the issues properly before me.

The landlord entered into written evidence a copy of the tenant's July 5, 2018 letter to the landlord in which the tenant agreed that they were not a good fit as a landlord and a tenant and that he would be actively looking for another rental suite. At the hearing, the tenant said that it had been difficult for him to find another place to live that would allow him to keep his dog and which was within his limited financial means.

The tenant testified that he has kept music levels in his suite to a reasonable level. The tenant maintained that much of the landlord's concerns stem from the landlord's belief that he was not truthful about his circumstances at the beginning of this tenancy. He said that he watches movies on the computer and has conversations with relatives on the computer. The tenant claimed that he turns down the volume of music and the television after 9:30 p.m. each night. He said that this is an older home with little soundproofing and that the landlord may not have realized the extent to which sound travels throughout the house when she rented the premises to him. The tenant said that the maximum volume level on his music system is "30" and he has the volume turned down to "5".

The tenant said that the landlord has become increasingly agitated with his presence in the rental home and has taken to yelling and screaming abuse at him and stomping her feet on the ceiling. He said that the landlord's requests to have him turn down his music have not been presented "nicely".

The tenant said that he had not done anything that would enable the landlord to end his tenancy for cause. He maintained that he did not know why the landlord was maintaining that she felt unsafe with him living there. The tenant claimed that the landlord's evidence was insufficient to end his tenancy.

The tenant's uncle said that the tenant keeps to himself to the extent possible, that he is very respectful, and that the tenant tries his best to avoid the landlord altogether without bothering her. The tenant's uncle testified that there is no reason for the landlord to be concerned about her safety. In response to a question from the landlord, the tenant's uncle said that he had only been to the tenant's rental unit a few times after 10:30 p.m., when the landlord maintains the music is often too loud.

The tenant also described an incident on August 12, 2018, where he maintained the landlord extended her verbal abuse against him to a physical assault on him when she punched him in the back of the head. The landlord said that she called the police on that date and that the tenant physically touched her as he brushed by her at the gate. Since this incident occurred after the 1 Month Notice was issued, I advised the parties that I would not be taking into account actions or events that happened after the 1 Month Notice was served.

Analysis

The reasons expressed in the landlord's original July 1, 2018 email seeking an end to this tenancy appear to stem from the landlord's mistaken belief that the inclusion of a provision in the tenancy agreement that reserved her right to evict the tenant on 30-60 days notice had any legal standing. Section 5 of the *Act* prevents parties from entering into contracts that lie outside the *Act*. Paragraph 6(3)(a) of the *Act* prevents a party from enforcing a provision in a tenancy agreement if it contravenes the *Act*. Tenancies can only be ended in accordance with the provisions of section 44 of the *Act*, which in this case requires the tenancy to be ended in accordance with the reasons set out in section 47 of the *Act* for ending a tenancy for cause.

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice. In this case, the tenant applied to cancel the 1 Month Notice even before the official 1 Month Notice was issued, so I accept that the tenant's application is properly before me.

The relevant portions of section 47(1) of the *Act* read as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,...

As was recognized by the landlord, this tenancy cannot end for the other two reasons cited in the 1 Month Notice because the landlord has not claimed that the tenant has been doing anything illegal at the rental unit.

There is conflicting evidence with respect to whether the landlord has reason to be concerned about her health and safety. Although the landlord has entered into written evidence a letter of support from a friend who noted that the landlord has had her own challenges in the past which make this situation more difficult for her, the landlord has not entered into written evidence anything from a health care professional attesting to the landlord's concerns in this regard. That having been said, the extent to which a party genuinely believes their health and safety are being seriously jeopardized by the continuation of a tenancy is in the final analysis different for each person. What one person would consider a significant jeopardization of their health and safety may barely be noticed by another person.

I have little doubt that the landlord genuinely believes that the tenant's continuing presence in the rental suite below her constitutes a serious health and safety risk to her. Whether that is truly the case is hotly disputed by the tenant and his uncle. Both parties have made allegations that it is the other party that has been abusive to them. Without witnesses or video evidence, it is difficult to identify who is to blame for these incidents. The landlord alleges that the tenant plays music and makes noise excessively and late into the evening. The tenant claims that the landlord yells, screams and stomps her feet on the floor above him and has on occasion physically assaulted him.

As mentioned to the parties at the hearing, my task is limited to the extent that the landlord had grounds based on what had transpired as of July 29, 2018 to issue the official 1 Month Notice to the tenant. While the landlord testified that there has only been one incident since the 1 Month Notice was issued, that incident does raise concern as it seems to have been an escalation of the verbal abuse allegations to ones of a more physical nature and which apparently led to the calling of the police to investigate. It is unclear as to whether the actions taken by either of the parties on August 12, 2018 were an escalation of what had until then been a quieter period of interaction following the issuance of the 1 Month Notice or were intended to influence the outcome of this hearing. At any rate, it is somewhat reassuring that neither party reported any other incidents of this nature between August 12 and the date of this hearing.

The sworn testimony presented at the hearing and the written evidence provided two very different perspectives on who was at fault in this matter. The landlord maintained that the tenant has repeatedly and continuously played loud music and made other singing and vocalization noises late into the evening in contravention of the stipulation that was provided in their tenancy agreement to keep noise from music and the TV

down after 10:30 p.m. each night. The tenant could not understand how the volume of his music and television was at a level that could end his tenancy for cause.

In such circumstances, arbitrators often look to ensure that the tenant has received proper warnings to correct their behaviours and activities that could lead to an end to their tenancy for cause before a 1 Month Notice is issued. In this case, the landlord's July 1, 2018 email in which she sought to end this tenancy, but without attaching the required 1 Month Notice on the official RTB form, served as a warning to the tenant. However, the issues noted in that July 1, 2018 only gave specific reference to the landlord's concerns about the misleading information provided by the tenant when this tenancy began and about the disputed and unwitnessed allegation that the tenant touched his private parts while speaking with her.

As mentioned at the hearing, there is no provision in the *Act* that would allow a landlord to evict a tenant for providing misleading answers regarding a tenant's whereabouts on weekends. As there was no witness to the landlord's allegation that the tenant improperly touched himself while speaking with her, an allegation firmly denied by the tenant, a tenancy could not be ended for this reason either. However, the landlord's inclusion of the claim that the tenant had disrespected the rules established in writing when he moved into the rental unit could very well be interpreted as an alleged violation of the rule requiring the tenant to keep noise from music or the TV to a minimum after 10:30 p.m. In this regard, the landlord's July 1, 2018 email also referenced previous discussions that had been ongoing since the winter.

At the hearing, the landlord gave undisputed sworn testimony that she had been involved in ongoing and repeated requests that the tenant keep his noise level down, especially late at night. The landlord also entered into written evidence a statement from her sister who witnessed "loud vocalizations (laughter)" that she maintained kept her awake most of the night originating in the tenant's suite. The tenant and his uncle did not dispute that there had been ongoing discussions with the landlord about this tenancy. It would appear that the landlord even approached the tenant's probation officer to seek assistance in supporting the tenant in his attempts to find alternative accommodations.

The landlord appears to have been under the mistaken impression that the tenancy agreement the parties signed gave her full authority to end this tenancy on 30-60 days notice. The principal reasons cited in the July 1, 2018 email for ending the tenancy were not ones that could have led to an end to this tenancy for cause pursuant to

section 47 of the *Act*. However, as noted above, there was also reference in that email to the tenant's alleged contravention of the terms of their tenancy agreement, the principal one of which was no doubt the restriction on playing loud music and the TV after 10:30 p.m. It would certainly have been better had the landlord put her specific concerns about noise levels of music, television, singing and vocalizing in writing, both during the winter months when she was apparently involved in discussions with the tenant and in the July 1, 2018 email. However, based on a balance of probabilities, I find that the tenant received sufficient warning from the landlord as to why the landlord was planning to seek an end to this tenancy if the tenant did not find somewhere else to live. The landlord's issuance of the emailed 1 Month Notice on July 1, 2018 should not have come as a surprise to the tenant.

Having received that July 1, 2018 email and after having informed the landlord that this type of notice could only be issued on the correct RTB form, the tenant had a fresh opportunity to demonstrate that he could abide by the noise stipulations in their tenancy agreement. Although the landlord testified that there had been some improvement between the tenant's receipt of the July 1, 2018 email and July 29, 2018, the date of the 1 Month Notice, the landlord gave undisputed sworn testimony that there were some occasions when the noise levels late at night did significantly interfere with and unreasonably disturb her. While the frequency of those occasions when noise from the tenant's suite seems to have improved since the warning email of July 1, 2018 was sent, I find that the landlord has demonstrated to the extent required that the noise coming from the tenant's suite had significantly interfered with her and unreasonably disturbed her to the point where the landlord had adequate reasons to issue the 1 Month Notice for Cause on July 29, 2018.

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Section 52 of the *Act* reads in part as follows:

In order to be effective, a notice to end tenancy must be in writing and must...

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I am satisfied that the landlord's 1 Month Notice of July 29, 2018 entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession. As the landlord has accepted rent for September 2018, the landlord will be given a formal Order of Possession which must be served on the tenant requiring the tenant to vacate the rental unit by 1:00 p.m. on September 30, 2018. If the tenant does not vacate the rental unit by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

In coming to this determination, I recognize that there may be merit to the claim made by both the tenant and the tenant's uncle that this is an old house and sound travels easily from one level to another. The landlord may not have been fully prepared for the extent to which sound in the basement suite would be audible in her part of this home, and this is not necessarily the tenant's fault. My decision that the landlord had reason to end this tenancy for cause does not in any way condone the landlord's attempt to end this tenancy by way of an email or on the basis of her interpretation of the clause in the tenancy agreement that purportedly reserved her right to end this tenancy for reasons that may not have been allowed under the *Act*.

During the remainder of this tenancy, I would hope that the parties can co-exist with one another and avoid episodes of playing loud music, excessive television noise, screaming, yelling, stomping on the floor, as well as verbal and physical abuse of any type.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on September 30,

2018. 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: September 07, 2018

Residential Tenancy Branch