



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

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 they were handed the 1 Month Notice by the landlord on September 26, 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 the tenant handed them a copy of the tenant's dispute resolution hearing package on October 11, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received copies of the landlord's written, photographic and video evidence, I find that this evidence was served in accordance with section 88 of the *Act*. The tenant did not provide any written evidence other than what was incorporated in their application for dispute resolution.

The tenant's application to cancel the 1 Month Notice was not received by the Residential Tenancy Branch (the RTB) until October 11, 2018. It appears that the tenant's application was originally submitted to the local Service BC office on October 5, 2018, within the 10-day time frame established in section 47 of the *Act*. The tenant testified that there were a few minor errors in the tenant's original application that held up Service BC's processing of the tenant's application and forwarding of that application to the RTB. On this basis, I have considered the merits of the tenant's application; however, I also note that it is the responsibility of the applicant to ensure that all required information is included in an application for dispute resolution and that

it is provided to the RTB within the time limits established pursuant to the *Act*. The responsibility for doing so does not rest with Service BC.

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? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed tenancy for an upper unit in a two unit dwelling commenced on June 1, 2018 and is scheduled to continue until May 31, 2019. Monthly rent is set at \$1,800.00, payable in advance on the first of each month, plus one-half of the utilities for this rental home. The landlord continues to hold the tenant's \$900.00 security deposit and \$600.00 pet damage deposit, paid on May 23, 2018.

The landlord has accepted an \$1,800.00 payment from the tenant for use and occupancy only for the month of November and not to continue this tenancy beyond the October 31, 2018 effective date noted on the 1 Month Notice.

The landlord's 1 Month Notice identified the following two reasons for ending this tenancy for cause:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed 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;*

At the hearing, the landlord testified that they were uncertain as to whether any charges had been laid by the police stemming from any of the repeated visits to the tenant's rental unit. The landlord noted that the downstairs tenants had heard repeated references to drugs being used in the tenant's rental unit, but conceded that the landlord had no firm proof that there had been illegal activity occurring in the rental unit.

The landlord provided considerable written, photographic and video/audio evidence to support the landlord's assertion that the tenant has significantly interfered with and unreasonably disturbed the three student tenants (the students) living in the rental unit below them. While some of this evidence pertained to incidents that happened after the landlord issued the 1 Month Notice, many of the incidents of noise, music being played late into the night, yelling, swearing, and threatening sounding exchanges between people in the tenant's rental unit

occurred prior to the landlord's issuance of the 1 Month Notice. The landlord provided undisputed written evidence regarding three occasions when police were called to attend to the tenant's rental unit, on July 21, September 23, and September 24, 2018.

The landlord also entered into written evidence letters from all three of the students who reside in the rental unit below the tenant. These letters outlined a range of incidents, all of which demonstrated a level of disturbance to their quiet enjoyment of the premises and ability to continue residing in the rental unit. The landlord also entered into written evidence copies of October 30, 2018 letters from these students advising that they would no longer be able to continue residing in the lower rental unit as of November 30, 2018, despite their having entered into a fixed term tenancy agreement with the landlord, due to the disturbances in the rental unit above them. The landlord testified that one of these students has been so frightened and disturbed by the behaviours originating in the tenant's rental unit that they have not been living in the rental unit for much of their tenancy, although they continue to pay monthly rent to the landlord. The landlord testified that the students may be willing to remain in their rental unit if this tenancy is ended and the landlord gains vacant possession of the rental unit by the end of November 2018.

The tenant did not deny or dispute any of the landlord's written evidence. The tenant did not deny that there have been disturbances, noting that everything the landlord and the students said is "all true." The tenant explained that they allowed their 21-year old daughter to return to live with the tenant and the tenant's teenaged son when this tenancy began. The tenant's daughter had been on her own for four years and suffers a range of mental health issues, which make it difficult for her to control her behaviours. The tenant noted that both of their children have also had problems coping with the recent suicide of their father.

The tenant testified that their daughter has not been living with them since about November 2, 2018. The tenant said that they work evenings and their son works days, so there is no longer any noise or disruption as these incidents were initiated by their daughter when they were living there. The tenant said that there was no chance that they would allow their daughter to return to live with them and their daughter is moving to another community. Trucks that the tenant had been keeping on the driveway and which also concerned the landlord have been removed from the premises about two weeks before this hearing.

The landlord testified that there has been another police visit to the premises following the landlord's issuance of the 1 Month Notice. The landlord expressed concern that allowing the tenant to remain in the rental unit could lead to the tenant's daughter returning to the rental unit and restore the level of disturbance that had prompted her student tenants in the lower unit to end their fixed term tenancy prematurely. The landlord testified that they could not hold the students to the terms of their fixed term tenancy because there was no question that their right to quiet enjoyment had been affected to the extent that their tenancy agreement would no longer be binding on them. The landlord said that they would be unable to rent the lower rental unit to anyone else if this tenancy remained in effect.

Analysis

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.

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if...*

(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,...

At the hearing, the tenant confirmed that the landlord had raised concerns with the tenant prior to the issuance of the 1 Month Notice. The landlord warned that the behaviours that were being exhibited in the rental unit were unacceptable and could not continue without putting the tenancy in jeopardy of being ended by the landlord. Although the tenant responded that they were dealing with these issues and had matters under control, the tenant testified that this did not prove to be the case. The escalation of noise and disturbance, playing of loud music late at night, yelling and screaming escalated to the point where the police had to be called to intervene on two successive nights shortly before the landlord issued the 1 Month Notice. The audio recordings entered into evidence by the landlord provide compelling evidence that the behaviours, primarily initiated by the tenant's daughter, caused unreasonable disturbance to the lives of the three students residing in the rental unit below the tenant. Even after the 1 Month Notice was issued and the landlord was taking action to address the student's concerns, these students decided that the level of disturbance was of such magnitude that on October 30, 2018, they issued notices to end their fixed term tenancies to the landlord. I find that the landlord's written and audio evidence, and in particular the detailed and undisputed letters from the students provide compelling proof that the landlord had sufficient reason to issue the 1 Month Notice to the tenant seeking an end to this tenancy for cause.

The tenant has submitted that the problem that prompted the landlord to issue the 1 Month Notice is no longer present now that their daughter has moved out. While this may be the case, I find that the landlord has made a valid observation that there is little to prevent the tenant's daughter from returning to the rental unit, despite the tenant's assurance that this will never happen again. The time to correct the problems that were leading to an ongoing and significant disturbance to the students living below the tenant was after these concerns were first raised

with the tenant and not three weeks before the hearing of the tenant's application to cancel the 1 Month Notice.

I find that the landlord had ample reason to end this tenancy on the basis of the significant disturbance to the students living in the rental unit below that was being caused by the tenant and the tenant's family. While the changed circumstances may have led to a decrease in this disturbance, the students have issued notices to end their tenancies because of the disturbances caused by those living in the rental unit above them. I find that as of the date that the landlord issued the 1 Month Notice, the landlord had sufficient reason to end this tenancy for cause. For this reason, I dismiss the tenant's application without leave to reapply.

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.

I am satisfied that the landlord's 1 Month Notice 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. This would normally have taken effect on October 31, 2018, the corrected effective date of the 1 Month Notice. The landlord gave sworn testimony that a payment was accepted by the landlord for use and occupancy only. This enables the tenant to remain in the rental until the end of the current rental period, November 30, 2018. A formal Order of Possession is attached to this decision, requiring the tenant to vacate the rental unit by 1:00 p.m. on November 30, 2018. This Order of Possession must be served on the tenant by the landlord or their representative

Since the tenant's application was dismissed, I make no order with respect to the recovery of the tenant's filing fee or any other matter.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective November 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: November 20, 2018

Residential Tenancy Branch