



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEILA JAHANIASL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL, CNC

Introduction

This hearing dealt with two applications:

- 1) The landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:
 - a. an Order of Possession pursuant to section 55; and
 - b. authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- 2) The tenant's application pursuant to the Act for:
 - a. cancellation of the landlord's One Month Notice to End Tenancy for Cause with an effective date of October 31, 2018 (the "**Notice**") pursuant to section 47.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. At one point during the hearing, the tenant had to be cautioned not to interrupt the landlord, and was reminded that she would have an opportunity to respond to the landlord's submissions. Following this incident, the tenant refrained from further interruptions.

The landlord was represented by both the owner of the property and the property manager. Hereinafter, I will refer to them collectively as the landlord.

On November 22, 2018, the tenant's application was heard and was adjourned to this date for reasons of deficient service of the tenant's dispute resolution package.

The tenant testified that the landlord was served the notice of dispute resolution package via registered mail on December 7, 2018. The landlord confirmed receipt of the notice of dispute resolution package on December 11, 2018. I find that the landlord

was served with this package on December 11, 2018 in accordance with section 89 of the Act.

Preliminary Issues

Service of landlord's dispute resolution package

Following the hearing on November 22, 2018, the arbitrator made the following order:

I order the landlord to serve the tenant with a copy of their application for dispute resolution and any written evidence upon which they intend to rely with respect to the landlord's application by personal service or by posting this material on the tenant's door.

At the present hearing, the landlord testified that it did not comply with this order. It testified that the only method by which it served the application package on the tenant was by registered mail on November 9, 2018. It stated that it did not comply with the order because it checked the Canada Post tracking number, and determined that the application package was received by the tenant on November 14, 2018.

The tenant testified that she did not receive the application package.

I find that, even if it was the case that the tenant received the application package on November 14, 2018, the landlord cannot be found to have properly served the tenant with the application package. The order made November 22, 2018 functioned to narrow the acceptable methods of service. It was made clear to the landlord the manner in which service of the application package would be permitted. The landlord failed to comply with this requirement. As the landlord did not apply for a review of the November 22, 2018 decision, I decline to issue a variance. Orders of this Branch must be complied with fully. The landlord failed to do so.

Accordingly, I dismiss the landlord's application for an order of possession, with leave to reapply, and for filing fees, without leave to reapply.

This leaves the tenant's application to cancel the Notice to be determined. Per section 55 of the Act, if the tenant is unsuccessful in their application, I may still grant the landlord an order of possession, notwithstanding the landlord's failure to serve the application package.

Landlord's documentary evidence

Section 88(c) of the Act states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

[...]

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

Residential Tenancy Rule of Procedure 3.15, in part, states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The tenant testified that she did not receive the landlord's evidence.

In response to this, the landlord provided a registered mail tracking number, and asserted that the package had been retrieved by the tenant. I have confirmed via the Canada Post tracking website that the package bearing the tracking number provided by the landlord was delivered on November 14, 2018.

Additionally, during the hearing, the tenant made reference to another building tenant's email and email address (which contained the word "nihilist"). This email was contained in the landlord's application evidence. The email addressed to the property manager, and the tenant was not cc'd on the email. The tenant did not explain how she came into possession of this email. Based on the registered mail tracking information, I find that the most reasonable explanation for how the tenant came into possession of the email is that she has received the landlord's application package, and she was mistaken when she stated that she had not.

Accordingly, I find that the applicant received the respondent's evidence package in accordance with Rule 3.15 and section 88 of the Act. I therefore admit the landlord's evidence package into evidence.

Issue to be Decided

Is the tenant entitled to a cancellation of the Notice?

Background and Evidence

While I have considered the documentary evidence referred to by the parties, and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a fixed-term tenancy agreement with a start date of December 1, 2017 and an end date of November 30, 2018. The monthly rent is \$1,450, and the landlord collected (and still retains) a security deposit in the amount of \$725. The tenant continues to reside at the rental unit (the "**Unit**").

On September 26, 2018, the landlord served the tenant with the Notice by hand delivery. The tenant confirmed this.

The Notice sets out the reasons for the end of tenancy as:

- the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety of another occupant of the landlord.

The landlord testified that, starting in June, 2018, it began to get complaints from other tenants of the building of the strong odour of incense coming from the Unit. It testified that these scents could be smelled in both the lobby of the building, and on floor above that which the Unit was located on. Additionally, the landlord testified that the tenant would leave the incense burning while she was not present in the Unit, and would also burn it on the Unit's balcony.

The landlord testified that, on July 19, 2018 it sent a letter to the tenant requesting her to cease burning incense in the Unit, citing the strong odours and the potential for an unattended flame being a fire hazard.

Following the issuance of this letter, on August 24, 2018, a tenant from another unit complained to the building manager about the continued strong smell. This tenant and the manager went to the Unit to ask that the tenant cease burning incense. The landlord testified that the tenant became hostile, and started threatening the manager.

On September 4, 2018, the landlord issued a second letter requiring the tenant to cease burning incense in the Unit. The landlord testified that, following the issuance of this letter, the tenant became belligerent, going to other floors of the building and yelling death threats at a tenant.

In its evidence package, the landlord included emails from five other tenants in the building which set out various accounts of their experiences with the tenant. These include:

- 1) An incident on August 24, 2018 (referenced above) where the tenant “screamed” at the writer when the writer and the building manager knocked on the Unit door to ask that the tenant stop burning incense in the Unit.
- 2) An incident on September 19, 2018 where the tenant was observed standing on her balcony waiving an incense stick around, and then leaving it on the balcony to continue to burn.
- 3) Instances of the tenant screaming at another tenant who occupies the unit directly above the Unit (the “**Upstairs Tenant**”) outside that tenant’s door, and leaving knuckle marks in the door from banging on it. The Upstairs Tenant also alleges that the tenant films her “for no reason”, and has called the police on her.
- 4) Multiple instances observed by a neighbour of the Upstairs Tenant, where the tenant comes “up to the third floor screaming in the hallway atop her lungs shouting random threatening aggressive words” including “I will beat you, you fucking bitch”, “fucking bitch don’t run the water making noise your shower” [sic], and “stop complaining about me, I will beat and kill you bitches”.
- 5) Instances where the incense smoke was so strong that it made another tenant who lives four floors above the tenant’s throat “feel raw” and their lungs “constricted”.

The evidence package also includes voicemails left by various tenants of the building for the landlord made contemporaneously with one or more incidents where the tenant was outside the building, in one tenant’s words “howling, shouting, and carrying on about how she is going to kill people, [how] she wants to fight them”. On two of the recordings, a person (presumably the tenant) can be heard screaming in the background.

The tenant admitted that she burned incense in the Unit, and on the balcony. She also stated that, after receiving the first letter, she *increased* the amount of incense she burned. She did not provide a reason for why she did this. Ultimately, she testified that she has reduced the amount of incense that she burns. However, she did not testify that she stopped completely.

The tenant admits that she “overreacted” at times when dealing with her neighbours. However, she denies that she threatened to kill any of her neighbours (she testified that the only person she ever threatened to kill was her brother). She testified that the reason for her acting in a manner which she characterized as “outrageously loud and clear” towards the Upstairs Neighbour was due to the Upstairs Neighbour causing so much noise that it prevented her from sleeping. The tenant characterized this noise as like a “hammer being banged” against the floor.

The tenant further testified that the Upstairs neighbour was “stalking” her and watching her “24/7”.

The tenant testified, in effect, that sleep deprivation caused her to act in the manner she did.

Additionally, the tenant testified that two neighbours knocked on her door to confront her about the incense smell, but that she apologized to one of them. She further testified that she has apologized to other neighbours for yelling at them from outside the building.

During her submissions, the tenant testified made reference to a particular neighbour’s email address (which included the word “nihilist”) and that it should give insight into that neighbour’s character. She asked that this neighbour’s accounting of her actions be disregarded for this reason.

Analysis

In cases where the tenant applies to cancel a notice to end tenancy, the landlord bears the onus to demonstrate that the notice was validly issued, and the reasons for the landlord’s ending of the tenancy are substantiated.

Section 47 of the Act, in part, reads:

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,

In this case, in order to show that the Notice is valid, the landlord must demonstrate that the tenant satisfied the conditions set out at section 47(1)(d)(i) or (ii). If the landlord is successful in so doing, I may order the Notice upheld. If I do, then section 55 of the Act applies:

55 (1) 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 find that the tenant, by continuing to burn incense, and by yelling and screaming at other tenants, unreasonably disturbed other tenants in the building.

I find that the tenant burned large amounts of incense, and that this constituted a nuisance to other occupants of the building. I accept as reliable the emails the landlord submitted into evidence on this point.

The tenant's own evidence supports my finding that she unreasonably disturbed the other tenants. After having received the initial letter from the landlord demanding that she stop burning incense, the tenant admitted to *increasing* the amount of incense she burned for two weeks. Furthermore, while the tenant testified she decreased the amount of incense she burned after these two weeks, she never stopped, despite receiving a second demand to do so.

I also find the tenant has unreasonably disturbed other tenants of the building by shouting at various tenants through their doors, and by pounding on the doors. There is ample evidence of this in the materials that the landlords submitted. The tenant does not deny any particular instance as set out in those materials. She admits that she "overreacted", acted "outrageously loud and clear", and yelled at neighbours from

outside the building. This corroborates much of what is included in the landlord's evidence (both emails and voicemails).

For the purposes of this case, it is not necessary for me to determine whether the tenant made death threats towards any of the other tenants of the building. The yelling, howling, and screaming is sufficient to engage the requirements of section 47.

I do not find the tenant's reason for acting the way she did to excuse her conduct. Sleep deprivation is not a valid reason to yell, scream, and bang on a neighbour's doors. The tenant failed to persuade me that the Upstairs Tenant "stalked" the tenant or watched her "24/7".

For the aforementioned reasons, I find that the reasons for issuing the notice are valid, and that the tenant has failed to show I should set the notice aside.

I must now apply section 55 of the Act. As I have upheld the Notice, I must grant an order of possession if the Notice complies with section 52 of the Act.

Section 52 states:

- 52** In order to be effective, a notice to end a 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

The Notice is signed and dated by the landlord. It sets out the correct address of the Unit. It states the effective date of the notice as October 31, 2018. It sets out the grounds for ending the tenancy (see above). The form used is an older version of an approved Residential Tenancy Branch form. For the purposes of notices to end a tenancy, an older version of an approved form is deemed valid if it includes the correct information for the tenant as to how to proceed. The Notice contain the correct information, and provides a web address which redirects to the current Residential Tenancy Branch website.

As all the requirements of section 52 are met, I grant the landlord an order of possession, effective two days after the landlord serves this order on tenant.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective two days after service 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: December 17, 2018

Residential Tenancy Branch