



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 they were handed the 1 Month Notice by the landlord on December 3, 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 December 13, 2018, 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*.

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 a rental unit on the uppermost floor of a three storey-walk-up rental building commenced as a one year fixed term tenancy in March 2007. When the initial term expired at the end of February 2008, the tenancy continued as a month-to-month tenancy. Current monthly rent is set at \$750.00, payable in advance on the first of each month. There are three other rental units on the tenant's floor, four on the main floor,

and one rental unit in the basement. The landlord continues to hold a \$325.00 security deposit for this tenancy paid when this tenancy began in 2007.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by January 31, 2019 for the following reason:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord*

In their written evidence and sworn testimony, the landlord maintained that the tenant had been given repeated warnings that a continuation of the noise and disturbance caused by the tenant, in particular in her interactions with the person living with the tenant, would lead to the tenant's eviction as the tenant was disturbing the quiet enjoyment of other tenants in this building. The landlord cited notices sent to the tenant on August 19, 2018, August 31, 2018 and September 26, 2018. The landlord testified that the notices of August 31, 2018 and September 26, 2018, copies of which were entered into written evidence by the landlord, were specific to the tenant regarding the tenant's behaviours that others residing in this building found disturbing. The tenant's assistant maintained that they were unaware of the tenant having received one of the warnings in August 2018, and that the August 19, 2018 notice was sent to all tenants in this building. Neither the tenant nor the tenant's assistant disputed the landlord's assertion that a specific warning letter was given to the tenant on September 26, 2018.

The landlord gave sworn testimony and written evidence that incidents continued to occur after the landlord provided the tenant with written warnings that the tenant's behaviours could lead to an eviction for the tenant's disturbance of the quiet enjoyment of others in this building. The landlord indicated that an incident happened at approximately 4:30 a.m. on October 23, 2018, which disturbed the neighbours due to the fighting between the tenant and the person living with the tenant. The second incident on November 28, 2018 was an argument between the tenant and the person residing with the tenant that was so disruptive and disturbing to others in the building that someone called the police to intervene.

The landlord also entered written evidence of notes received from tenants in two separate units who reside on the same floor as the tenant. These notes expressed ongoing concerns about the arguments and fights between the tenant and the person residing with the tenant. They asserted in these notes that the person residing with the tenant is frequently locked out of the tenant's rental unit and has to bang on the tenant's

door, yelling and sometimes pleading with the tenant to let them back in the rental unit. Sometimes the person residing with the tenant has had to sleep in the hallway on their floor because the tenant won't allow them back in the rental unit.

The tenant provided sworn testimony and written evidence that the first of these incidents, which the landlord maintained occurred during the early morning hours of October 23, 2018, could not have been attributable to the tenant as the tenant was hospitalized from October 20, 2018 until November 3, 2018. The landlord maintained that the events in question occurred at 4:30 a.m. on October 23. The tenant's assistant gave sworn testimony that the tenant could not have been home that night as the tenant was medicated and staying in their hospital bed by 7:00 a.m. when the tenant's assistant visited the tenant at the hospital. The tenant also entered into written evidence a document signed by their doctor stating that the tenant was in the hospital on October 23, 2018, awaiting surgery performed on October 26, 2018. The tenant did not deny the November 28, 2018 incident or that the police were called and became involved, although the tenant maintained that this was not necessary. The tenant did not deny that they argue with the person living with them sometimes, but claimed that their arguments are not of such a magnitude as to cause unreasonable disturbance to others living in this building.

The tenant's assistant and the tenant noted that the tenant is deaf in one ear, which causes the tenant to speak a little louder than would normally be the case. The tenant's assistant and the tenant said that the tenant has been working on reducing the volume of their conversations. The tenant said that the other tenants in the building have not raised issues directly with the tenant, and that the tenant does not intentionally cause trouble for anyone or disturb anyone. The tenant testified that the landlord has singled out the tenant for special attention, advising others in the building of the landlord's intention to evict the tenant. The tenant's assistant asked that the tenant be given an additional opportunity to remain in this rental unit where the tenant has lived for many years.

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. Since the tenant's application was submitted to the RTB within the time frames established by 47(4) of the *Act*, the onus

shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

After taking into consideration the sworn testimony and written evidence of the parties, I find that much of the tenant's position rests on questions as to how many notices the landlord provided to the tenant to change behaviours and the number of times the tenant's behaviours have disturbed the quiet enjoyment of others living in this building. In this regard, the tenant and the tenant's assistant were of the apparent opinion that warnings provided to all of the tenants in the building about their need to protect the quiet enjoyment of others in this shared rental building were not relevant for the purposes of consideration of the landlord's 1 Month Notice because they were not directed specifically at the tenant. I disagree with this assertion. While a widespread notice of this type does not carry the same weight as the landlord's specific notices issued solely to the tenant, they are still an indication that the landlord expected those residing in the building to protect the quiet enjoyment of those living in this building.

Whether the landlord gave two specific notices to the tenant, as the landlord maintained, or whether the September 26, 2018 notice to the tenant was the sole specific written warning given to the tenant, I find that the tenant was fully aware that if the behaviours being exhibited by the tenant at that time, behaviours that the landlord maintained have continued, were continued that the landlord would be issuing a 1 Month Notice to the tenant. The August 31, 2018 letter informed the tenant that this was to be considered a formal notification and final warning. Despite this "final warning", the landlord issued another letter to the tenant, asking for a discontinuation of similar behaviours, which was described as a "final formal warning."

Under these circumstances, I find that the November 28, 2018 argument between the tenant and the person living with the tenant that deteriorated to the extent that the police were called to intervene was sufficient on its own to give the landlord full reason to issue the 1 Month Notice. I also note that the written evidence supplied by the tenant's doctor does not provide definitive proof that the tenant was not in the rental unit at 4:30 a.m. on October 23, 2018, when an earlier dispute between the tenant and the person residing there broke out. The doctor's letter only states that the tenant was hospitalized on October 23, which does not call into question the landlord's evidence that the tenant returned to the hospital later that day, and well after the incident at 4:30 a.m. on October 23, 2018. Nevertheless, the sworn testimony of the landlord is consistent with the accounts provided in the written statements from two separate tenants who reside on the same floor as to the ongoing disturbance that the tenant has caused even after receiving the final warning letters.

Based on a balance of probabilities, I find that the landlord had just cause to issue the 1 Month Notice as I find that the tenant has significantly interfered with and unreasonably disturbed other occupants in this rental building to an extent that this tenancy ends on the effective date identified in the 1 Month Notice. I dismiss the tenant's application to set aside the 1 Month Notice.

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 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 to take effect on January 31, 2019, the effective date identified on the landlord's 1 Month Notice. The landlord will be given a formal Order of Possession which must be served on the tenant. 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.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice without leave to reapply. The landlord is provided with a formal copy of an Order of Possession effective by 1:00

p.m. on January 31, 2019. 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: January 17, 2019

Residential Tenancy Branch