Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kelson Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPC

Introduction

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

- an order of possession for a breach of a material term of the tenancy pursuant to section 55; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenant to call into this hearing scheduled for 9:30 am. Two representatives of the landlord (the property manager and the building manager) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

The property manager testified that the tenant was served the notice of dispute resolution package via registered mail on January 8, 2019. She provided a Canada Post tracking number (included on the cover of this decision). I find that the tenant was deemed served with this package on January 13, 2018, five days after the property manager mailed it, in accordance with sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

1) an order of possession; and
2) recover its filing fee?

Background and Evidence

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

The parties entered into a fixed-term tenancy agreement dated November 2, 2018. The tenant moved into the rental unit on that date. Monthly rent is $1,850.00. The tenant paid a security deposit of $925.00 and a pet damage deposit of $925.00. The landlord retains these deposits. The tenant has paid the current month's rent, and continues to reside in the rental unit.

On November 27, 2018, the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the "**Notice**"), by posting it on the tenant's door. The Notice indicates an effective move-out date of December 31, 2018.

The grounds to end the tenancy cited in the Notice were:

1) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

The building manager testified that she had received numerous noise complaints (both written and verbal) from occupants of the two units directly below the tenant. She testified that the tenant would stomp on the floor and drag furniture throughout the night, and that the occupants below were unable to get restful sleep as a result.

The landlord submitted into evidence copies of complaint letters from the lower tenants dated from November 13, 2018 to December 1, 2018. The building manager testified that she continues to receive noise complaints from the lower tenants about the tenant (the most recent being on February 12, 2018).

The building manager testified that the tenants below threatened to break their leases, and move out, due to the noise caused by the tenant, and that they would seek damages against the landlord.

On November 25, 2018, the landlord issues a formal warning letter to the tenant demanding that she cease making loud noise during the night, and that if she did not, a One Month Notice to End Tenancy would be issued.

The building manager testified that she spoke with the tenant both before and after the issuing of this letter, and the tenant denied she was making any noise.

I should note that the tenant applied for a dispute resolution proceeding to cancel the Notice on December 10, 2018, but failed to serve it on the landlord. The hearing was scheduled for January 21, 2019. She did not attend the hearing (and neither did the landlord), and her application was dismissed, with leave to reapply. The property manager testified that she only became aware of this hearing when she received a copy of the written decision in the mail.

Analysis

Sections 47(4) and (5) of the Act state:

> (4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
>
> (5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
>
> (b)must vacate the rental unit by that date.

Based on the landlord's testimony and the Notice, I find that the tenant was served with an effective notice, and is deemed served on November 30, 2018, three days after it was posted on the tenants door, per sections 88 and 90 of the Act. However, I find the tenant made an application within 10 days of being deemed served with the Notice (although she did not attend the hearing). Accordingly, I cannot find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (December 31, 2018).

However, I accept the testimony of the property manager and building manager. I find that the tenant, on a number of occasions, unreasonably disturbed her lower floor neighbours. It is not reasonable to cause significant noise from walking or moving furniture in the middle of the night.

I find that the tenant was given an opportunity to correct this offending behavior, but failed to do so.

Residential Tenancy Policy Guideline 6 states:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> […]
>
> A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

I find that by unreasonably disturbing her lower floor neighbours, the tenant breached their entitlement to quiet enjoyment. The landlord is obligated to provide quiet enjoyment to these neighbours, and can be held responsible for the actions of the tenant if it failed to provide such quiet enjoyment.

Accordingly, I find that it acted reasonably by first offering the tenant an opportunity to correct the offending behavior, and then, when the behavior was not corrected, to issue the Notice.

Accordingly, as the Notice was properly issued, I find that the landlord is entitled to an order of possession. As the tenant has paid rent for the month of February 2018, I grant the order of possession effective 1:00 pm on February 28, 2019.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain $100.00 of the $925.00 security deposit in full satisfaction of the monetary award. The landlord is cautioned to follow the provisions of section 38 of the Act in regards to the remaining $825.00 of the security deposit and $925.00 pet damage deposit balance.

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 in, and enforced as an order of, the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I order the landlord to retain $100.00 of the security deposit and address the remaining security deposit and pet damage deposit balance in accordance with section 38 of the Act.

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: February 20, 2019

Residential Tenancy Branch