



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARHAR GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via personal service. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person on February 13, 2019. Neither party raised any service issues. I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant on January 3, 2019 with the 1 Month Notice dated January 3, 2019. The 1 Month Notice sets out an effective end of tenancy date of February 1, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the 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.

The details of cause listed are:

October 17, 2018 noise complaint given due to music/tv being so loud you can hear it in every unit all day and night.

December 16, 2018 second noise complaint given.

January 3, 2019 disturbing peace, uttering threats to another tenant, police had to escort out.

Discussions with both parties clarified that monthly rent was due on the 1st day of each month and as a result the effective end of tenancy date is corrected to February 28, 2019 to allow for 1 month's notice. Both parties acknowledged their understanding, neither party raised any arguments.

During the hearing the landlords clarified that they had chosen reason for cause #2 (put the landlord's property at significant risk) in error and as such wished to cancel this portion of the 1 month notice. The landlords also stated that the remaining listed 3 reasons for cause were for the below noted issues.

The landlord claims that the tenant was served the first noise complaint letter dated October 17, 2018 in which multiple complaints were received concerning excessive noise from the tenant's rental unit. In the letter the tenant was cautioned that the tenant must "quickly modify the behaviour we will be forced to take action that may include evicting you from the premises." The landlord stated that the tenant was served a second noise complaint letter dated December 16, 2018 in which a complaint was received for excessive noise from the rental unit on December 16, 2018. It states in part that "that excessive noise is a violation of your lease and continued violation could lead to termination of your lease." The landlord also stated that on January 3, 2019 an

incident took place in which the named tenant had uttered threats to another tenant. The landlord has provided copies of two statements from the complainant/other tenants in support of this claim. The landlord stated that the tenant was arrested and taken away by the police. The landlords have provided a police incident number. The landlord has received two signed complaint letters dated January 24, 2019 from the other tenants regarding the threats. The landlord provided affirmed testimony that the 1 month notice dated January 3, 2019 was served to the tenant as a result.

The tenant has argued against the landlords claims stating that at no time has threats been made toward the other occupants of the rental building. The tenant has provided undisputed evidence that although the police had arrested him, he was subsequently released and no charges were filed. The tenant has also stated that a request for a copy of the police report was made, but as of the date of this hearing was not available for submission. In regards to the landlord's excessive noise complaints, the tenant has provided direct testimony the noise reported cannot be helped due to personal health issues.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. In this case, both parties have confirmed that the landlord served the tenant with the 1 month notice dated January 3, 2019 for cause in person on January 3, 2019.

The evidence of both parties was made up of primarily direct testimony. The landlord provided affirmed testimony that the threats were made so loud that she heard them from within her unit. The tenant has emphatically disputed that at no time was a threat made against the other tenant. The landlord has submitted in support of these claims copies of two complainant/other tenant letters detailing the circumstances of the January 3, 2019 incident. The landlord has also provided copies of two letters dated October 17, 2018 and December 16, 2018 regarding excessive noise complaints in which the tenant was cautioned that his tenancy was in jeopardy. I also note that although no charges were filed by the police and as such no finding was made regarding the threats that the police did arrest the tenant to remove him from the situation.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the

party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, I find on a balance of probabilities that the landlord has provided sufficient evidence to satisfy me that threats were made against another tenant. This is based upon the landlord's report as a witness which is supported by the other tenants' letter(s) of complaint. I also find that the landlord has provided sufficient evidence regarding excessive noise which was documented in the two letter(s)/notice(s) to the tenant in October and December 2018. On this basis, I find that the tenant's application to cancel the 1 month notice is dismissed. The 1 month notice dated January 3, 2019 is confirmed. Pursuant to section 55 of the Act, the landlord is granted an order of possession to be effective on February 28, 2019 as per the corrected date on the 1 month notice dated January 3, 2019.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 21, 2019

Residential Tenancy Branch