



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 22, 2019 (the "Application"). The Tenant applied to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated January 18, 2019 (the "One Month Notice"), as well as an order for regular repairs, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant, the Tenant's advocate M.B., as well as the Tenant's witness T.J. appeared for the Tenant. L. L., L.A., and E.K. attended as Agent's for the Landlord. All parties attending the hearing provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that she served the Application package to the Landlord in person on January 22, 2019. L.A. confirmed receipt. The Tenant confirmed that she did not submit any documentary evidence in preparation for the hearing. L.A. testified that she served the Landlord's documentary evidence to the Tenant in person on February 26, 2019. The Tenant confirmed receipt. Based on the oral and written submissions of the parties, and in accordance with sections 88 and 89 of the *Act*, I find that the parties were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession

if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement.

The Tenant's request for a regular repair order is dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice dated January 18, 2019 pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the Tenant resides in subsidized housing. The tenancy began on August 1, 2016. Currently subsidized rent in the amount of \$510.00 is due to be paid to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$498.00, which the Landlord currently holds.

L.L. testified that the Landlord is seeking to end the tenancy as a result of numerous incidents which took place from December 13, 2016 to January 17, 2019. As a result, the Landlord served the Tenant a One Month Notice dated January 18, 2019 with an effective date of February 28, 2019 by posting it to the Tenant's door. The Landlord submitted a proof of service document in support. The Tenant confirmed having received the notice on the same date. The One Month Notice was served for the following reasons;

“The Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant” and;

“The Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security, safety, or physical wellbeing of another occupant”.

The Landlord testified that the Tenant has been subject to numerous complaints regarding loud music, loud noise, parties, smoking in her suite, and intoxication. The Landlord submitted documentary evidence which includes letters of complaint from other tenants in the building, warning letters from the Landlord, and security reports. The following incidents were contained in the Landlord’s submissions;

December 13, 2016 – warning letter sent to Tenant about having a party from 11:30 pm to 2:00 am. The Landlord’s expectations around quiet times were outlined in the letter.

July 5, 2017 – complaint received by the Landlord from another tenant indicating that the Tenant was insulting another tenant in the building.

November 27, 2017 – complaint received by the Landlord from another tenant. A warning letter about loud noises and smoking from inside was issue by the Landlord.

January 24, 2018 – incident report outlining three complaints regarding the Tenant being intoxicated and causing a disturbance. It was noted that Police attended and arrested the Tenant.

January 29, 2018 – Tenant attended the building manager’s office half dressed, with no pants, shouting and appeared to be under the influence of alcohol.

February 5, 2018 – a final warning letter issued by the Landlord to the Tenant cautioning against the actions noted on January 24, 2018.

December 8, 2018 – a report from a hired security guard indicated that the Tenant was having a party at 9:00 pm and that Police were required to attend in relation to a theft of a cell phone.

December 21, 2018 – a report from a hired security guard indicated that the Tenant was having a party at 10:10 pm.

December 29, 2018 – a report from a hired security guard indicated that the Tenant was having a party at 10:10 pm.

January 8, 2019 – a tenant in the building complained about the Tenant fighting with another individual at 1:00am. Police were called as a result.

January 9, 2019 – Landlord received a complaint from the Tenant's neighbour indicating that the Tenant has been smoking, drinking, and playing very loud music in her suite until 3:00 am.

January 13, 2019 - a report from a hired security guard indicated that the Tenant was playing music loudly and had guests inside the unit until 1:45 am.

In response, the Tenant indicated that she has historical issues between herself and another tenant in the building who has submitted complaints about the Tenant. The Tenant states that the allegations about noise are false and that the tenant in question lives two floors above and would not be able to hear any noise from the Tenant's suite. Furthermore, the Tenant indicated that the building is old and that soundproofing is an issue.

The Tenant called her witness T.J. who testified that she had been with the Tenant during certain complaints and stated that the complaints have no merit as they were not being loud. T.J. reconfirmed that there is ongoing issues between the Tenant and other tenants in the building.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on January 18, 2019 with an effective vacancy date of February 28, 2019, by positing it on the door of the dispute address. The Landlord submitted a proof of service document in support. The Tenant confirmed having received the notice on the same

date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlord served the One Month Notice to End Tenancy on the basis that the Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant and the Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical wellbeing of another occupant.

In this case, the Landlord has outlined numerous incidents in which the Tenant was found to be making loud noises, playing loud music, smoking, and found to be intoxicated. The Tenant argued that she has a personal issue with another tenant in the building and feels as though the complaints have no merit.

I find that it is more likely than not that the Tenant has or unreasonably disturbed other occupants in the building. I find that the complaints submitted by the Landlord were from different tenants, as well as from a hired security guard. After numerous warning letters from the Landlord, it appears as though the Tenant has not corrected her behaviour.

In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice, without leave to reapply.

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the One Month Notice, submitted into evidence by the Tenant, I find it complies with section 52 of the *Act*.

As a result, I grant the Landlord an order of possession, which will be effective at 1:00 pm on March 31, 2019 after service on the Tenant.

Conclusion

I dismiss the Tenant's Application to cancel the One Month Notice, without leave to reapply.

Pursuant to section 55(1) of the Act, the Landlord is granted an order of possession, which will be effective at 1:00 pm on March 31, 2019 after service on the Tenant. This order should be served on the Tenant as soon as possible. If the tenant fails to comply with the order of possession it may be filed in 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: March 11, 2019

Residential Tenancy Branch