Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1019785 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant under the Residential Tenancy Act (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under section 47 of the *Act*.

The tenant appeared. The landlord's agent KU appeared ("the landlord"). Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord's materials. No issues of service were raised. I find each party served the other in accordance with the *Act*.

Both parties were informed of Section 55 of the *Act* which requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause 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 in compliance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the One Month Notice under section 47 of the *Act*?

If the tenant's application is denied, is the landlord entitled to an order of possession under section 55 of the *Act*?

Background and Evidence

The tenant submitted no documentary evidence. The landlord filed about 100 pages of evidence. While the landlord was giving testimony, I warned the tenant twice to stop talking and arguing. The tenant provided testimony for over ten minutes without interruption.

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The parties agreed they entered into a month-to-month residential tenancy agreement beginning August 1, 2018 for monthly rent of $940.00 payable at the first of the month. The unit is located in an apartment building. No rent is outstanding. At the beginning of the tenancy, the tenant provided a security deposit of $470.00 which the landlord holds. The tenant continued to occupy the unit.

The parties agreed the landlord issued a One Month Notice dated January 28, 2018 and posted it to the tenant's door on January 28, 2019, thereby effecting service three days later on January 31, 2019 pursuant to sections 88 and 90 of the *Act*. A copy of the One Month Notice was submitted in evidence with an effective date of February 28, 2019 claiming the following grounds:

> *The tenant or a person permitted on the property by the tenant has:*
> 1. *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
> 2. *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

On February 5, 2019, the tenant applied within 10 days of service to dispute the notice.

The landlord testified as to the reasons for the issuance of the notice.

The landlord stated that the tenant complained constantly to the landlord about imagined noise and personal disturbances during the tenancy. The landlord stated that, shortly after the tenant moved in, the tenant started complaining about sounds, disturbances by other tenants, tenants interfering with her electricity and wifi, secret cameras in her unit, and other tenants conspiring against her in a variety of ways. She claimed to hear various noises, such as tapping or pounding on her walls, the source of which the landlord could not identify despite making investigations and inquiries. If the landlord did not reply immediately to the tenant's texts, the tenant called the police to make complaints.

Several times a week, the tenant texted the landlord, sometimes five times in a day, and often during the night. The landlord testified she promptly investigated the tenant's complaints about noise and other tenants and always found the complaints groundless.

The landlord explained that she must keep her phone on during the night in case of emergencies in the apartment building. Many times, the tenant texted the landlord after hours in non-emergency matters. For example, one night, the tenant sent 9 messages to the landlord between 12:28 AM and 1:28 AM. The landlord submitted copies of the texts which indicated times and dates. One text dated August 16, 201t at 1:03 AM stated:

> *Sorry usually if I get scared or anxious I call the psych ward and talk to the nurses. I kinda haven't talked much to my support people here in my apartment cause I don't want everyone all around me hearing that I'm scared or not doing well. I'm scared to leave at night too if I need to go to the ER. There's usually someone out front the entrance sitting in a car, just sitting with it running. They usually leave when I turn off my lights and go to bed. It's strange. And no I'm not hearing things.*

The landlord testified the above text was typical of the many texts she received from the tenant throughout the tenancy. The landlord asked the tenant on many occasions not to text her with non-emergency matters outside office hours; she warned her that she would be asked to leave the unit if the behaviour did not stop. However, the landlord stated the requests and warnings had no effect; the tenant's practice continued of continual texting to the landlord, often during the night, complaining over trivial matters, making allegations of noise, or claiming mean-spirited actions by other tenants. The

landlord submitted hundreds of text messages between the parties including warnings by the landlord.

Throughout the tenancy, the landlord testified she has received countless complaints from other occupants of the building about the tenant. They called or texted the landlord to say the tenant was “scary”, or rude and abusive, and that she stood in the door of her unit glaring at other tenants for no apparent reason. The other tenants reported that she called the police to complain about normal noise and activity.

In mid-January, the tenant complained to the landlord that neighbouring tenants were hauling the electrical wires out of her walls causing the electricity not to work in her unit. The landlord submitted copies of texts in which the tenant claimed the “guy upstairs… [was] pulling wires and what not along his floor... is he part of it too”.

The landlord and her husband went to the unit to investigate and found the tenant loud, upset, unreasonable and accusatory, initially denying them access to the unit. Investigation subsequently revealed the problem was minor, non-functioning outlets with a normal repair solution by an electrician which took place as soon as possible. During the hearing, the tenant persisted in her claim that someone was tampering secretly with the electrical system in her unit.

The tenant acknowledged she may have “over-texted” the landlord. However, she asserted she had a great deal to complain about: insensitive neighbours who make noise at all hours of the day or night, people laughing and walking too loudly in the hallways, suspicious activity that could be drug dealing, neighbours “talking trash” about her so loudly it was audible to the tenant, and people (including the landlord) spying on her by such means as hidden cameras.

In a voice mail of January 18, 2019, a text of which the landlord submitted, the tenant is noted as asking the landlord if she or her husband “put cameras in here and if so that’s kind of against the law….”.

The tenant acknowledged that she had PTSD, mental health issues, and was “sensitive”. However, she claimed that the disturbing, loud and inexplicable sounds permeated her unit at unpredictable times and the landlord should stop them; during the hearing the tenant claimed to hear pounding coming through her walls which was another deliberate attempt by other tenants to disturb her.

Analysis

The onus is on the landlord to establish the cause upon which the One Month Notice is based.

Rule 6.6 of the Rules of Procedure states in part as follows:

> *The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim*.

I find the landlord has established grounds for the issuance of the One Month Notice. Based on the testimony presented at the hearing, along with the documentary evidence from the landlord, I find that the landlord has met the burden of proof on a balance of probabilities that multiple incidents have occurred between the tenant and the landlord as well as the tenant and other occupants of the building which amount to “significance disturbance” as set out in the One Month Notice. I find the incidents described meet the requirements of section 47.

I have considered all the evidence and testimony. I accept the landlord’s evidence that the tenant has imagined various things, such as noise, about which she has repeatedly and unreasonably complained to the landlord. I find the landlord has conducted reasonable investigations and has properly concluded the complaints are without any reasonable foundation. I find these complaints have related to non-existent or imaginary circumstances. I accept the landlord’s testimony and documentary evidence of many complaints of a non-emergency type being made to the landlord during the night. I find the landlord has repeatedly warned the tenant about her behavior in texting so often, particularly at night, and requested that she stop unnecessary and groundless complaints, particularly after office hours. I find the tenant has ignored all warnings and persisted in her continual, groundless complaints.

I find that the tenant has significantly interfered with and unreasonably disturbed the landlord and other occupants of the residential property to the extent that the landlords were justified in issuing their One Month Notice. As I have made this finding with respect to the first ground in the Notice, I will not examine the additional ground for the issuance of the Notice.

I therefore dismiss the tenant’s application to cancel the One Month Notice.

I determine the One Month Notice form complies with section 52. Pursuant to section 55(1), the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed. In consideration of all the evidence and submissions, I find the landlord is entitled to an order of possession effective two days after service.

Conclusion

The tenant's application to set aside the One Month Notice is denied.

I grant the landlord an order of possession which is effective two days after service. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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*.

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Dated: March 19, 2019

Residential Tenancy Branch