



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GUR KARTAR HOLDING LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's application: OPC FFL
Tenant's application: CNC OLC

Introduction

This hearing dealt with an Application for Dispute Resolution ("application") by both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied to obtain an Order of Possession based on a 1 Month Notice to End Tenancy for Cause dated May 24, 2019 ("1 Month Notice") and to recover the cost of the filing fee. The tenant applied to cancel the 1 Month Notice, and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The hearing began on July 15, 2019, and after 27 minutes, the hearing was adjourned to allow for the attachment to the 1 Month Notice to be submitted in evidence that both parties confirmed they had received; however, that was not submitted in evidence to the Residential Tenancy Branch ("RTB"). As a result, an Interim Decision dated July 15, 2019, was issued, which should be read in conjunction with this decision.

On this date, September 9, 2019, the hearing continued and attending for the landlord was agent PG and LM and witness TR. Attending for the tenant was the tenant and no witnesses. During the hearing the parties were given the opportunity to present documentary evidence and affirmed testimony. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing.

Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld under the Act?

- If the 1 Month Notice is upheld, is the landlord entitled to an order of possession and the recovery of the cost of the filing fee under the *Act*?
- If the 1 Month Notice is cancelled, should the landlord be directed to comply with the *Act*, regulation or tenancy agreement under the *Act*?

Background and Evidence

The tenancy began on September 1, 2017. The tenant pays monthly rent of \$1,000.00 per month. The rental unit is located in an apartment building with many units.

The tenant testified that she received the 1 Month Notice on May 27, 2019 by mail. The 1 Month Notice was submitted in evidence and has an effective vacancy date of June 30, 2019, which has passed. The parties confirmed that money has been paid by the tenant for use and occupancy for the month of September 2019.

The landlord alleges one cause listed on the 1 Month Notice. That cause is:

“Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.”

In the “Details of Cause” section of the 1 Month Notice, the landlord writes “2 pages attached”. The 2 page document was reviewed during the hearing and refers in part to six prior written warning letters on the following dates:

July 12, 2018
September 13, 2018
February 18, 2019
February 26, 2019
February 27, 2019
March 4, 2019

In addition, the agents stated that another warning letter since issuing the 1 Month Notice was issued to the tenant dated June 27, 2019 for a total of 7 written warnings regarding noise disturbance from the tenant.

The landlord called witness TR (“witness”) who testified that they have lived in the building for 19.5 years and that she lives below and one unit over from the tenant and that she is disturbed if not daily, every second day by unreasonable noise from the

tenant. The witness described the noise either furniture dragging across the floor, loud sounds resulting in the walls shaking, or other thumping and banging. The agents referred to a list by the witness indicating at least 84 times on at least 17 different days where there was noise coming from the tenant's unit that disturbed the witness and was not reasonable noise heard by other tenants in the building. The witness stated that the noise has not stopped and that she continues to disturb her and her neighbour Mona. The witness testified that she was also in Mona's unit which is directly below the tenant and that she personally heard more amplified noise coming from directly above where the tenant lives and that the noise was there even when the tenant did have her children in the unit. The witness said the noise is an extreme level and not normal everyday noise.

The tenant on cross-examination asked if the witness was giving her opinion on the noise, to which the witness stated I have experienced it, so this is my experience I am describing. The tenant also asked how many times the witness has heard the noise, and the witness stated very frequently, and that she also hears the noise when visiting Mona and that the noise is unbearable. The witness stated that she either hears the noise daily or every second day. The tenant then asked the witness how she knows the noise is coming from the tenant's unit, to which the witness replied because of the location of the sound and that the tenant's unit is the only unit that makes that level of noise.

The landlord agent testified that she has spoken with the tenant on many occasions about the noise and the tenant would deny that it was her making the noise. The landlord agent stated that is why he followed up with written noise warnings and stated that the noise continues and that the noise has not stopped and the problem continues as a result. The landlord agent also stated that he has offered a comparable unit at the same amount of monthly rent on the lowest floor in an attempt to mitigate the issue, and that the tenant refused the offer. The tenant first denied that the landlord had offered another unit and then changed her testimony to confirm an offer was made by the landlord.

In addition, the tenant first testified that she had not received all 7 of the written warning regarding noise and later changed her testimony again to confirm in fact that she had received all of the written warnings from the landlord.

The tenant did not have any witnesses to present during the hearing.

Analysis

Based on the documentary evidence and testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I find the tenant disputed the 1 Month Notice within the 10 day timeline provided under the *Act* by disputing the 1 Month Notice on May 27, 2019 and that the 1 Month Notice issued was dated May 24, 2019. The tenant continues to occupy the rental unit.

After hearing the testimony of tenant, landlord agents, and the landlord witness, I prefer the testimony of the landlord and their witness over that of the tenant. I find the tenant is not credible as her testimony changed on several occasions and failed to provide any alternative for the noise being alleged. Therefore, I find the landlord has met the burden of proof and I uphold the 1 Month Notice. I am satisfied that it was the tenant who caused frequent unreasonable noise in their rental unit and that even with 7 written warnings, continued to unreasonably disturb other occupants of the apartment building. Consequently, I dismiss the tenant's application in full, due to insufficient evidence.

Pursuant to section 55 of the *Act*, I must grant the landlord an order of possession if the 1 Month Notice complies with section 52 of the *Act*. I have carefully reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession **effective September 30, 2019 at 1:00 p.m.** as the parties confirmed that money has been paid by the tenant to the landlord for use and occupancy for September 2019.

Pursuant to section 72 of the *Act*, as the landlord's application was successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee. **I authorize** the landlord to retain \$100.00 from the tenant's security deposit of \$500.00 in full satisfaction of the recovery of the cost of the filing fee. As the amount of the tenant's security deposit was previously \$500.00, I find the new balance of the tenant's security deposit is now \$400.00 pursuant to sections 67 and 72 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is fully successful.

The tenancy shall end on September 30, 2019 at 1:00 p.m.

The landlord is granted an order of possession effective September 30, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit balance is now \$400.00.

This decision will be emailed to the parties. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 9, 2019

Residential Tenancy Branch