



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER NATIVE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 30, 2019 ("One Month Notice"), for more time to apply to have the One Month Notice cancelled.

The Tenant, a Tenancy Support Worker ("TSW") for the Tenant, C.N., and two agents for the Landlord, K.J. and I.O. (the "Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. One witness for the Tenant, R.O., was also present and provided affirmed testimony ("Witness").

During the hearing the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Tenant said he delivered his Application, Notice of Hearing, and documentary evidence to the Agents in person on September 12, 2019. He said the Witness was with him when he served the documents. The Agent, K.J., said that he only received the Application and Notice of Hearing from the Tenant, but no documentary evidence. The

Witness was called upon and said he was not the person who observed the Tenant serve the documents on the Landlord. The person who witnessed this action was not available to testify in this regard in the hearing.

The Agents said they served the Landlord's documentary evidence on the Tenant by registered mail on October 31, 2019, and November 1, 2019. The Tenant said that he received these packages and had time to review their contents.

The evidence before me includes that the Tenant forgot who witnessed him serve his documents on the Agents. Based on the evidence before me, overall, I find it is more likely than not that the Tenant neglected to include his documentary evidence with the package he served on the Landlord. As a result, it would be administratively unfair of me to consider the Tenant's documentary evidence, since the Landlord did not have an opportunity to review it prior to the hearing. I relied on the Tenant's testimony in the hearing as evidence before me.

The Tenant applied for more time to cancel the One Month Notice. On review of the One Month Notice, I find that it was dated and served on the Tenant on August 30, 2019, by posting it on the rental unit door. Pursuant to section 90 of the Act, a document posted on a party's door is deemed served three days after being posted. I, therefore, find that the One Month Notice was deemed served on the Tenant on September 2, 2019. According to section 47 of the Act, the Tenant had ten days to apply for dispute resolution for an Order cancelling the One Month Notice. As such, I find that the Tenant had until September 12 to apply for dispute resolution. Our records show that the Tenant applied to the RTB on September 11, 2019. As such, I find he applied on time and did not need any more time to confirm the Application; therefore, the Tenant's claim for more time is dismissed.

Further to the hearing, I noticed that the Landlord's name is different on the tenancy agreement than it is on the Application. The Agent named on the Application, K.J., is not the Landlord, but is a representative of the Landlord Society. Accordingly, I amended the Respondent's name on the Application, pursuant to section 64(3)(c) and Rule 4.2 to match the Landlord in the tenancy agreement.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2018, with a monthly rent of \$1,279.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$451.00, and no pet damage deposit, and that the Tenant paid his rent for November 2019.

The Agents said the One Month Notice was served on the Tenant, because the Tenant's behaviours were inconsistent with the tenancy agreement and the Landlord's "Good Neighbour Agreement" policy.

Clause 24 of the tenancy agreement states:

24) Conduct

The tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy. This includes activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The Tenant's initials are contained in a box beside this clause, acknowledging it.

The Good Neighbour Agreement includes the following statements:

I agree that all individuals should feel safe, secure and happy in their homes. I understand that [the Landlord] do not tolerate discrimination or antisocial behaviour from tenants or staff.

Antisocial behaviour comes in many forms, from serious acts of violence, harassment or threats of violence directed to one person or others, to general nuisance. The following list contains a number of examples of types of behaviour which we consider "anti-social". And as such, will not be tolerated.

- Aggressive and threatening language and behaviour
- ...
- Physical violence against people and property
- Loud noise, especially late at night (i.e. playing music loudly)
- Engaging or encouraging forms of social conflict
- ...
- ...

I agree that while I am a tenant of [residential property], I will do everything I can to be a 'good neighbour', and will not behave in any way which may be considered disrespectful or 'anti-social'.

I understand that if any member of the household, or visitors to the home acts in a way which can be considered aggressive, intimidating or anti-social, it will be considered a breach of tenancy and appropriate action will be taken. This may include warning letters, up to and or including a notice to end tenancy.

The Agents said that a copy of the Good Neighbour Agreement is posted in the lobby, as are reminders of this policy. The Landlord submitted photographs of the policy and reminders tacked up by a pink clock on a bulletin board that appears to be above mail boxes. One of the reminders in the photograph (in addition to the Good Neighbour Agreement), states the following:

REMINDER

Violence, foul language
threats, and abusive
behaviour will **not** be
tolerated and may result in
restrictions on service
provided, removal from this
building, and/or legal action.

The Agents also noted Addendum 1 to the tenancy agreement that was signed by the Parties on October 19, 2018. This Addendum sets out the Landlord's Crime Free Housing policy, which includes statements, such as:

In consideration of the execution or renewal of a Residential Tenancy Agreement of the residential property identified in the Residential Tenancy Agreement, the Landlord and Tenant agree as follows:

The Tenant and any persons invited onto the residential property or residential premises by the tenant shall not engage in any criminal activity on the premises or property including, but not limited to:

...

Assault or threatened assault;

...

Any criminal activity that threatens the health, safety or welfare of the landlord, other tenants, or persons on the residential property or residential premises. VIOLATION OF THE ABOVE PROVISIONS, WHICH IS A REASONABLE AND MATERIAL TERM OF THE TENANCY AGREEMENT, SHALL BE GOOD CAUSE FOR A NOTICE TO END TENANCY.

A single violation of any of the provisions of this added addendum shall be deemed a serious violation and material non-compliance with the Residential Tenancy Agreement. It is understood and agreed that a single violation shall be good cause for notice to end a Residential Tenancy Agreement. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be predominant of the evidence.

...

[emphasis in original]

In the hearing, the Agents said the Tenant breached the tenancy agreement and these policies by playing music loudly at night, despite warnings, and being disrespectful to staff, including once hitting a staff member while in the residential property.

The Agents said: "His aggressiveness has increased. We had to call [local police] once. He was handcuffed and arrested on this occasion, August 28, 2019. We tried to mediate his behaviour with his support worker and the Good Neighbour Agreement, but he refused to sign that. However, it is posted in the lobby for all tenants."

The Landlord submitted video recordings that they say demonstrate the Tenant doing the following:

- Pushing a lounge door very violently which caused Tenant Support Worker [R.] to lose balance;
- The [local police] arrive and arrest [Tenant];
- The [Tenant] pushing another person [R.O.];
- The [Tenant] yelling, kicking a door and being belligerent to staff; and
- The [Tenant] walking to the East Lounge looking mad.

The Landlord's video format is not recognized by the RTB computer system, so I was unable to view these images; however, the descriptions in the Landlord's documentary and testimonial evidence are before me for consideration.

The Tenant said:

I didn't get a Good Neighbour Agreement to sign or anything of that nature. Second, in the video, I'm accused with assault, but I wasn't charged with any offence. They said I was causing a disturbance and I went to the drunk tank. The door was being slammed on me in the video. [R.O.] had already fallen down and hurt himself, and I was trying to help him up.

The Agent, C.N., then said: "I wasn't hit – I was the staff member accosted that evening, and I called the [local police] and the ambulance to take care of [R.O.'s] injuries. I was there and experienced the assault. I can say that he was taken [by the police] for drunken disorderly for the safety of the building, but not an assault charge."

The Tenant replied: "In the video evidence, [C.N.] is shown in the first video. They arrived on to the scene when [R.O.] had fallen, coming out of my house very drunk. But I don't see anywhere where I assaulted her or accosted her.

In terms of the Tenant's relationship with [R.O.], the Tenant said: "I control what vodka he has, so that he doesn't fall into a stupor. He'll buy it and I'll give him a third of a bottle for a day."

The Tenant commented on the Agents' claim that the Tenant used bad language, the Tenant said: "I made that language to my guest with my door shut - to my guest [not to the support workers]. Everything's been blown out of proportion. Zero clarity – there were three other people with their doors open and nothing's being done. I was being unfairly picked on about my door being open. Where does it say that my door has to be closed in my lease? My door has to be shut. Take it to the next level.

The Agent [C.N.] said:

The night in question that led to the eviction notice, the door was not closed and [R.O.] and [the Tenant] were in the hallway and screaming at me about [TSW, R.] being a cunt and a bitch when I was on phone with [the local police].

Regarding the clarity around the doors, [the Tenant] is accurate that there is some unclarity regarding his door and others' doors. I mentioned to him a few times to shut his door. It's the building policy re fire doors being closed at all times.

His music is being loud, there were letters, he uses angry words and accusations to staff members. Each tenant was being dealt with individually, so it's not my place to tell him about what's happening to others.

In recent weeks, there have been shorter spurts of loud music, he's escalating, the door does continue to be open.

The Agent, I.O., commented on the Good Neighbour Agreement:

On August 9, 2019, we sent [the Tenant] a letter about his excessive noise and aggressive behaviour. In the second last paragraph it says that this behaviour is not tolerated in the building. Please set up a meeting to go over the Good Neighbour Agreement. This was also posted on his door so that he could discuss it with the support worker.

On [August] 28th, when [R.O.] was on the floor, [the Tenant] was trying to get [R.O.] to his feet. . . [the Tenant] put hands on [Agent C.N.] to stop her from going near [R.O.]. He also blocked her to stay out of his place.

[C.N.] brought her cell phone in case things escalated. As she was giving information to the [local police], they did hear name calling like 'you cunt, you bitches'. The point of this is to show his aggressive language to our staff. The reminders in the lobby inform tenants that language will not be tolerated.

Also, this was not a one-time occurrence. This language has been escalating over the past several months. It is noted in support worker logs.

The Landlord submitted copies of Support Workers' logs, which included the following notations:

December 8, 2018: 11:14 am #304 [occupant] was seen on footage having disagreement with [Tenant] for unknown reasons.

January 14, 2019: At 12:40 am, TSW [K.] called front desk asking for another staff to meet her on the 3rd floor, as [another occupant] made a noise complaint about [Tenant]. TSW [K.] and [J.] knocked on door of [rental unit] and Tenant agrees to turn down volume.

March 25, 2019: 6:33 pm Went to Tenant's unit to remind him of policy about # of people allowed in his unit. He had 3 other tenants in his unit. At 6:34 pm [S.H.] left his unit.

August 7, 2019: 12:07 am [R.O.] leaves [Tenant's] room and loud noise has stopped. See I.R. about noise complaint.

August 20, 2019: 4:43 pm, [C. and TSW T.] attend [Tenant's] unit, as there was loud music coming from his open door and there was a [Landlord] Board Meeting down the Hall.

August 24, 2019: TSW [R.] and FLSS responded to noise complaint [in rental unit]. Music was turned down.

August 28, 2019: Building patrol completed. All OK. After patrol, I went to the TSW Window on the 3rd floor to advise [C.] that [rental unit Tenant's] door was closed, but the music was loud. At this point, 7:49 pm I told [C.] I could hear the music, was much louder and that [the Tenant's] door was likely open.
10:18 Please see IR regarding these units [including rental unit number].

September 8, 2019 11:07 pm FLSS was going to 3rd floor to assist TSW [C.] as [rental unit] music was loud.

September 23, 2019 9:45 pm (FLSS) [W.], TSW [C.] went and knocked on [Tenant's] door. He had too many guests in his suite. [Tenant] answered and (TSW) [C.] reminded him about policy for having too many guests. [Tenant] said one guest will leave after finishing their drink. Guest left after 20 mins.

At the end of the hearing, the Agent, I.O., said

Regarding the fire doors having to be closed, it's posted at the front desk that all doors are to be kept closed. Section 20 of tenancy agreement addresses quiet enjoyment.

The Agents said that five different staff members have written reports about loud music and language. Our tenants can't do their work. This is a supportive housing building with 103 tenants with varying degrees of mental health issues. We have youth who account for 30 units, at-risk youth. We have to ensure they are safe, too.

Analysis

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

The Tenant did not deny that he repeatedly left his door open and played his music loudly in the rental unit. I find that loud music with the Tenant's door opened and closed, led to complaints from his neighbours. Further, the Tenant did not deny using foul language, such that it could be heard by people in the common area of the residential property.

The Tenant did not deny that an incident occurred on August 28, 2019, which involved him and the Witness being drunk and noisy into the hallway of the residential property. The Tenant did not deny that he was arrested by the police for being drunk and disorderly at the residential property on August 28, 2019.

The tenancy agreement includes an Addendum that the Tenant signed. This Addendum includes the following term:

A single violation of any of the provisions of this added addendum shall be deemed a serious violation and material non-compliance with the Residential Tenancy Agreement. It is understood and agreed that a single violation shall be good cause for notice to end a Residential Tenancy Agreement. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be predominant of the evidence.

[emphasis added]

Further, clause 24 of the tenancy agreement states:

The tenant agrees that if any occupant or guest causes unreasonable and/or excessive noise or disturbances the landlord may end the tenancy. This includes activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

[emphasis added]

Based on the evidence before me overall, I find on a balance of probabilities that the Tenant repeatedly breached the tenancy agreement by repeatedly playing his music too loudly. I also find that it is more likely than not that the Tenant's behaviour has included

aggressive, intimidating conduct, which has or is likely to have disturbed the quiet enjoyment of the other tenants and the Landlord.

The Tenant is unsuccessful in his Application to cancel the One Month Notice. I find that the One Month Notice is consistent with section 52 of the Act as to form and content, is based on valid grounds of breaching the tenancy agreement, and I confirm the One Month Notice.

The Tenant has paid rent to the end of November 2019. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective on November 30, 2019 at 1:00 p.m. **after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice. I found that he repeatedly breached the tenancy agreement by playing music too loudly, despite multiple warnings not to do this. He was also involved in an incident that resulted in his arrest by the local police.

The Landlord is granted an Order of Possession effective on November 30, 2019 at 1:00 p.m. **after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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: November 18, 2019

Residential Tenancy Branch