



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes **CNC FFT**

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”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

SX attended as agent for the landlord (“the landlord”). The tenant attended. The hearing process was explained and both parties had an opportunity to ask questions.

The landlord acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*. The tenant acknowledged receipt of the landlord's evidentiary materials.

Preliminary Issue 1

I informed the parties that in the event I dismissed the tenant’s application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed the month-to-month tenancy began in 2014 and is ongoing. Monthly rent is \$1,180.00 payable on the first of the month. The tenant paid a \$550.00 security deposit at the beginning of the tenancy which the landlord holds.

The landlord claimed the landlord warned the tenant about noise multiple times throughout the tenancy. The noise included loud video games, walking loudly on the floor and “sex activities”. The primary complainant to the landlord was the occupant of the apartment below the unit.

The landlord testified that the landlord submitted three warning letters to the tenant, dated April 26, 2018, April 23, 2019 and August 22, 2019, receipt of which the tenant acknowledged.

The parties agreed the landlord issued a One Month Notice served on November 1, 2019 with a (corrected) effective date of December 30, 2019. A copy of the Notice was submitted as evidence. The Notice stated the following as the reasons for issuance:

1. Tenant or a 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 well-being of another occupant.

The tenant acknowledged receipt of the Notice and filed an Application for Dispute Resolution on November 4, 2019.

The landlord requested an order of possession.

The tenant requested that the One Month Notice be cancelled.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

In an application to dismiss a One 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.

Section 47 states in part as follows:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: ...

(e) the tenant or a person permitted on the residential property by **the tenant has engaged in illegal activity that**

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[emphasis added]

The landlord relied on the causes in section 47 as underlined above.

The landlord submitted testimony, evidence and warning letters related to noise in the unit caused by the tenant.

However, the landlord has submitted no evidence that the tenant has "has engaged in illegal activity" as required under section 47(1)(e). The landlord acknowledged the landlord had no such evidence.

I therefore find that the landlord has *not* met the burden of proof on a balance of probabilities that the tenant has engaged in illegal activities as required under section 47(1)(e).

I therefore grant the tenant's application to dismiss the One Month Notice. The tenancy shall continue until it is ended pursuant to the tenancy agreement and the *Act*.

Conclusion

I order that the landlord's One Month Notice is dismissed without leave to reapply.

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: December 23, 2019

Residential Tenancy Branch