



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, LAT, OLC, LRE, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- An order to change the locks to the rental unit pursuant to section 31;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenant did not attend the hearing which was scheduled by conference call at 9:30 a.m. and concluded at 9:50 a.m. As she did not attend, she did not present evidence regarding the merits of her claim for me to consider.

Preliminary Issue

The day before the hearing, the tenant uploaded a copy of the email she sent to the Residential Tenancy Branch regarding this hearing. In this email, the tenant advises she wishes to withdraw her Application for Dispute Resolution however finds it difficult to obtain the landlord's consent to do so. Consent to withdraw an application to dispute a notice to end tenancy is required pursuant to Rule 5 of the Residential Tenancy Branch Rules of Procedure. The contents of this email were explained to the landlord at the hearing.

The email does not advise this arbitrator whether the tenant has yet moved out of the rental unit, although the tenant indicates she will be moving. The landlord was unable to advise whether the tenant has moved as of the time of the hearing. As the status of the tenancy was thus unknown, evidence was presented and testimony was heard from the landlord to determine the merits of the notice to end tenancy.

Issue(s) to be Decided

Should the one month notice be upheld or cancelled?

If cancelled, should the landlord be ordered to comply with the Act, and have her right to inspect the rental unit suspended?

Should the locks be changed?

Can the tenant recover the filing fee?

Background and Evidence

The applicant/tenant did not attend the hearing to present any evidence.

The landlord gave the following undisputed testimony. The rental unit is located in a detached house with 2 units.

She served the tenant with a One Month Notice To End Tenancy for Cause on June 26, 2020 by posting it to the tenant's door. A copy of the notice was provided as evidence. The reason for ending the tenancy is stated as follows:

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the expansive deck located on the property is the common area shared by both units and this was confirmed by a previous decision made by the Residential Tenancy Branch. The file number for the previous decision is recorded on the cover page of this decision. Since the beginning of the tenancy, the tenant has been harassing the landlord by taking photographs of the landlord and her guests while using the deck and the hot tub situated on the deck. The tenant would turn on all the lights in her unit, illuminating the landlord and her guests during their leisure time on the deck. The landlord submits her privacy was invaded and her use of the property was significantly interfered with. The landlord testified this has happened on numerous occasions, more than she can count. The tenant has also taken photographs of the landlord if she even steps foot on the deck or goes into the shed to perform gardening.

The landlord's health and safety were compromised by the tenant because the tenant constantly harassed her by threatening to reveal the landlord's rental income to the Canada Revenue Agency. This has caused the landlord stress and anxiety. The landlord was recently hospitalized, and the stress of the tenant's harassment has aggravated her recovery.

Analysis

I find the tenant was served with the One Month Notice To End Tenancy for Cause on June 29, 2020, three days after it was posted to her door in accordance with sections 88 and 90 of the Act.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

The tenant did not attend the hearing to dispute the landlord's testimony regarding the reasons for ending the tenancy. Based on the landlord's undisputed testimony, I find the tenant unreasonably disturbed the landlord on multiple occasions in photographing the landlord and her guests while using the common areas of the residential unit. I further find the tenant jeopardized the landlord's health and safety by harassing and

intimidating her with threats to report her rental income to the Canada Revenue Agency. For these reasons, I uphold the landlord's One Month Notice to End Tenancy for Cause.

Section 55 of the Act reads:

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.

I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*. Pursuant to sections 47 and 55, the landlord is granted an order of possession effective 2 days after service upon the tenant.

This tenancy is ending pursuant in accordance with the order of possession. As such, the remainder of the tenant's application is dismissed without leave to reapply.

As the tenant was not successful in her claim, she will not recover the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed 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: July 27, 2020

Residential Tenancy Branch