



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by their advocates.

As both parties were present service was confirmed. The parties each testified that they were served with the materials. Based on the testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in March, 2019. The current monthly rent is \$1,550.00 payable on the first of each month. The rental unit is a first floor suite in a multi-unit building containing 50 suites.

The landlord issued a 1 Month Notice dated July 14, 2020. The reasons provided on the notice for the tenancy to end is:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

The parties agree that the landlord issued an earlier 1 Month Notice in 2019 which was withdrawn after the parties settled the matter. The landlord submits that since that time the tenant's behaviour has been disruptive of the other occupants and they have had numerous complaints. The landlord testified that they have been told by occupants of the rental building that the tenant plays loud music at all hours, hosts large parties and generally act in a rude and disruptive manner. The landlord submitted some letters of complaint they say have been received regarding the tenant's behaviour.

The landlord characterizes the behaviour of the tenant as loud, aggressive and hostile. The landlord testified that they have received written and verbal complaints from the other occupants of the building regarding the tenant's use of racial slurs and hate speech, consistent loud parties hosted in the rental suite, use of a fire pit in the common areas and recent incidents where fireworks were set off adjacent to the rental building. The landlord submitted into documentary evidence letters from neighbors complaining about the tenant's behaviour and a video clip showing fireworks being set off towards the rental building.

The tenant submits that they have not caused excessive noise in the rental unit and any complaints made have been wrongly attributed. The tenant testified that they did not set off the fireworks in question nor are they aware of the identity of the individual who launched them at the rental building. The tenant disputes that they have used racial slurs or engaged in hostile interactions with other occupants of the rental building. The tenant submitted into evidence a reference letter from a neighbor in support of their good character.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

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 1 Month Notice.

Based on the totality of the evidence I find that the landlord has met their evidentiary onus to establish that there is a basis for this tenancy to end. I find that the act of shooting fireworks on residential property to be an inherently dangerous act that unreasonably disturbs other and is a source of serious jeopardy to the health and safety of others. I find that the letters of complaint from neighbors and the video recording to be sufficient to determine the source of the fireworks is the backyard area of the tenant's rental unit.

While the tenant disputes that they, or persons invited onto the rental property by the tenant, are the source of the fireworks or other disruptions, I find the landlord's conclusion that fireworks set off from an area outside of the rental unit and witnessed by other occupants to be attributable to the tenant to be reasonable. The tenant and their guests are identified as the source of the fireworks in the letters of complaint from the other occupants and viewed in conjunction with the video recording, I find that the landlord has met their evidentiary onus to establish that the tenant is the source of the fireworks launched adjacent to the building.

Similarly, I find the tenant's submission that the noise complaints are actually attributable to other occupants of the building or neighboring buildings to not be supported in the evidence and lack believability. I do not find the letter of support submitted into evidence to be particularly persuasive or reasonable in its conclusion that because the tenant has a young family they could not be uttering hateful speech. I find the tenant's denial and attribution of the disruption to unknown individuals to be inconsistent with the weight of evidence submitted by the landlord and devoid of an air of reality.

I accept the landlord's evidence that the tenant has caused unreasonable disturbance and interference with the other occupants of the rental building. I find that the multiple recent correspondence from other occupants regarding the problematic behaviour of the tenant to be sufficient to demonstrate that the level, frequency and content of the noise caused by the tenant is unreasonable and a significant disruption of the rights of the other occupants. The correspondence from the other occupants are consistent in their description of the rude, offensive and hateful speech emanating from the tenant and their guests at gatherings. I am satisfied that the tenant's conduct has given rise to a basis for this tenancy to end.

I find that the landlord has provided sufficient evidence to demonstrate that there is cause for issuing the 1 Month Notice and accordingly dismiss the tenant's application.

Section 55(1) of the *Act* reads 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

I note that as the parties testified that the monthly rent is payable on the 1st of each month, a 1 Month Notice issued July 14, 2020 is enforceable on a date no earlier than one month after the notice is received and on the day before the date when the rent is payable pursuant to section 47(2). Pursuant to section 53 of the *Act*, I find that the effective date is automatically deemed to be corrected to August 31, 2020, the earliest date that complies with the *Act*.

Accordingly, I issue an Order of Possession in the landlord's favour enforceable on the corrected effective date of the 1 Month Notice, August 31, 2020.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **August 31, 2020**. Should the tenants or any occupant 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: August 25, 2020

Residential Tenancy Branch