



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Commonwealth Holding Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, FFT

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 7, 2020 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenant and two agents for the Landlord, K.N. and D.A. ("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. During the hearing the Tenant and the Landlord 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case, if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2009, with a monthly rent of \$940.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$470.00, and no pet damage deposit. The Parties agreed that the residential property is a 14-storey apartment building.

The Landlord submitted a copy of the One Month Notice, which was signed and dated August 7, 2020, has the rental unit address, and was served in person on August 7, 2020. It has an effective vacancy date of September 15, 2020, which is automatically corrected to September 30, 2020, pursuant to section 53 of the Act. The grounds on which the One Month Notice was served are: that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and put the Landlord's property at significant risk; and breached a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The Agents said that the One Month Notice was served on the Tenant for two reasons. First, it was issued because of the number of complaints the Landlord has received about the Tenant from other building occupants, and second, because of the frequency of repair requests the Landlord has received from the Tenant within the last two years.

#1 Disturbance Complaints about Tenant

The Agents said:

It seems that it's a very common thing in the last four years. We've been getting written communications from other tenants about excessive noise from the

Tenant's unit after quiet hours to a point that people can't sleep, and the words they hear are not pleasant. It's affecting their quiet enjoyment of the residence.

Despite multiple warning letters, he doesn't change his behaviour for long – maybe a week or a month, and then it's back to same situation of the loud behaviour. If he is not willing to mitigate his behavior and understand that it's more than one person involved.... He continually interferes with other tenants' right to quiet enjoyment. We don't know what to do. Some long-term tenants have said that they might have to move, because of it.

The Tenant said:

In my evidence, I have two letters from 2018 and 2020 of noise complaints. She stated numerous complaints. Have I been receiving letters every week from the office? No. there's no evidence of that from any of the tenants.

I have reviewed their documents, and there are only a couple letters in there. Two from August and September of this year, but no evidence of the neighbours who are complaining. No evidence to prove it.

I have spoken to my neighbors – they say they have never been disturbed by me. The neighbour across from me, the neighbour on corner next to me said no. They have no evidence about these complaints.

The Agent said:

The reason we did not include the letters from tenants is because it's a privacy issue – we are bound by the *Privacy Act*. We only submitted the letters of complaint that were sent to [the Tenant.]

The Agents directed my attention to their submission, which included the following evidence about complaints and warnings given to the Tenant.

	DATE	WARNING
1.	May 11, 2018	Letter to Tenant from Landlord re “numerous noise complaints, written and verbal,” from other occupants
2.	April 27, 2020	Text message from building manager to turn down stereo – complaints from people working from home.

3.	August 24, 2020	Email to Tenant from Landlord re multiple complaints they received that day about his having approached other tenants regarding his eviction notice.
4.	September 1, 2020	Email to Tenant re another complaint about his having disturbed another tenant, despite request on August 24 to not do this.

The Tenant said he is a long-term tenant of the building and that he has received two letters of complaint regarding noise in over 11 years – “...nothing from previous years. This is wildly out of control. Every week – she says? I’d like to know what was disturbing from August 24 and September 1.”

The Tenant submitted copies of the following letters he received from other tenants about whether his behaviour disturbs them:

August 23, 2020

Hi [D.A.]

[The Tenant] came to my door and asked if I would write a letter.
I haven’t had any issues with noise coming from his place. I sleep soundly.

Kind regards
[Signatures]
[Unit number]

~ ~ ~ ~ ~

August 25, 2020

To whom it may concern,

I’d like to confirm that there’s not been any type of disturbances of any kind from any neighbour, namely from suite number [rental unit number], where [the Tenant] resides.

Sincerely,
Suite [Unit number]
Signature

#2 Unreasonable number of Repair Requests

The Agents said:

This is the majority of the package. He quite frequently contacts the building manager for repairs to the refrigerator. We have listed all repairs required in just last two years. Almost every month something needs to be repaired – we've replaced refrigerator twice.

He also has made multiple requests for moth traps. No other tenant had the issue. [D.A.] has given them to him multiple times, we had an exterminator in, too.

He asks for the closet doors to be repaired every 6 to 8 weeks. No one else is having these issues. We feel it is extreme neglect on his part.

The Tenant said:

As far as the property, I included a video of a front sliding door – the hinges at the top are all older ones they use. They try to fix it, but the video of the door shows that it still gets stuck and is hard to open. It is never fixed properly. The door in my bedroom? Seven times this door has been looked at. These little things get stuck and can't be opened properly. I've tried fixing them myself, but that's his job.

The Tenant submitted a video of him opening and closing the closet door after he said it was fixed by the building manager. Initially, the Tenant complains about how it takes pressure to open the door, but ultimately, he acknowledges that it is working well.

The Tenant said:

I've had an outlet on my stove fixed three times – see video no damage on it. They just stop working. I'm just using a kettle.

The refrigerator? See my document seven, which includes verification of the age of the appliances. They're 20 – 25 years old. If it breaks down, you get another old one. New tenants get new appliances. I've offered to buy it, but they refused. So why not take me up on my offer to pay for the majority of the cost of the fridge. They paid for part of the dishwasher I bought. It's fine, it's not 24 years old.

The stove has had to have the burner replaced once. The fridge has been a constant nuisance; they break down. There's no neglect on my part. The thermostat, the shower, a leak in the faucet – over 11 years. I painted and upgraded the light fixtures; the balcony contains a garden. That isn't showing a person who is neglectful of his apartment.

Regarding the moths, there is no evidence that they did fumigation. I paid for fumigation. The building is an absolute shambles regarding the moths. Every floor has a mass moth population – I've provided video evidence – I've videoed every floor. There are moths on every single floor from 2 – 14 – as well as in the elevator. They've neglected to deal with this.

The Agents said:

I can't speak to his comments about the refrigerator – that was before my time. I did not see a video myself, other than the moth video. If the video is recent, we all have experienced an unprecedented wave of them from the news. The moth problem has been ongoing for more than a year.

Recently, it's been all over the news that they're everywhere. In our building, our hallway windows open, and they are usually open wide in the summer. I think that's how the moths are getting in. Every couple of days we have cleaners take care of it. And I, myself, try to get rid of them at the front. They seem to be dying off and they're harmless.

In terms of the refrigerator - they're not that old, and it has nothing to do with the fridge. It's the amount of food that's put in them. I've explained it to him before.

The Tenant said: "I've provided the serial numbers and the model numbers and its from 1996. See document 7 part 1 – 3."

I looked at the Tenant's evidence about the age of the refrigerator, and I found the instructions on how to determine their age to be contradictory and unhelpful. For instance, the serial number of the Tenant's refrigerator is: DR364105V, which the instructions say was made in February, because the first letter is "D"; however, while the second letter is supposed to be the year, the chart does not have an "R" to find the year. Still, I accept that the refrigerators allotted to the Tenant are not new.

The Tenant submitted many photos of his apartment, which looks very nice. He also

submitted photos of the elevator in order to show the terrible condition it is in; however, other than having dated faux wood panelling, it looks fine from these photographs. Again, I accept that this is an older building, with older appliances and an older elevator.

Going through the Landlord's evidence of the Tenant's text or email requests for service, I found the following:

REFRIGERATOR/FREEZER SERVICE REQUESTS:

May 16, 2016
May 17, 2017
August 7, 2017
September 11, 2018
September 20, 2018
October 19, 2018
October 20, 2018
July 24, 2019
July 30, 2019

MOTH TRAP REQUESTS

January 31, 2018
April 23, 2018
May 3, 2018
May 15, 2018
January 16, 2019
February 6, 2019
March 12, 2019
March 18, 2019
January 29, 2020

CLOSET DOOR REPAIR REQUESTS

August 7, 2017
November 29, 2018
February 6, 2019
March 5, 2019
May 31, 2019
August 1, 2019
September 13, 2019
June 19, 2020
July 7, 2020

Analysis

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

Section 47 of the Act allows the landlord to end a tenancy for cause:

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

. . .

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

. . .

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

#1 Disturbance Complaints about Tenant

The Landlord checked the box on the One Month Notice indicating that the Tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. However, the tenancy agreement does not specify which terms are material, and in the hearing, the Agents did not specify to what this referred.

However, I find that the warning letters and emails about the Tenant's behaviour, indicates a pattern of behaviour on his part that equates to repeatedly and unreasonably disturbing other occupants of the residential property. Further, despite having received a warning on August 24, 2020 about approaching other occupants regarding the One Month Notice, the Landlord received another complaint(s) from other occupant(s) about the Tenant having again approached someone for a letter of support.

Given this context, I find that the length and limited substance of the Tenant's letters of support raise questions in my mind about their genuineness. I find it more likely than not that these people felt pressured by the Tenant to write a letter on his behalf. Accordingly, I give these letters limited weight in my considerations.

While I am loath to end a long-term tenancy, I find that based on the evidence before me, overall, that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice on the basis of complaints from other occupants of the building about the Tenant.

#2 Unreasonable number of Repair Requests

I find that the Tenant's repeated request for repairs indicates a pattern that could be interpreted as unreasonably disturbing the Landlord and possibly putting the Landlord's property at risk. Regarding the refrigerator, the Tenant said: "There's no neglect on my part", yet the Agent said he has warned the Tenant not to have the refrigerator too full, or this problem will happen again. And it has happened repeatedly, and much more frequently than it happens to other occupants of the residential property.

I find this supports the conclusion that the Tenant does not consider how his own behaviour affects the negative consequences he faces with complaints from neighbours and elements of the rental unit repeatedly breaking down. I appreciate the Tenant's evidence that the appliances are not new; however, I also recognize the Agents' evidence that no one else has as many repair requests as the Tenant.

When I consider the impact of the Landlord's two-pronged concerns about the Tenant, I find that they have provided sufficient evidence on a balance of probabilities to fulfill their burden of proof in this matter. Based on all the evidence before me overall, I dismiss the Tenant's Application to cancel the One Month Notice. I find that the Landlord is eligible for an Order of Possession. I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act, as to form and content. Given the above, and pursuant to section 55 of the Act, I award the Landlord with an Order of Possession.

As the effective vacancy date of the One Month Notice has passed, I, therefore, grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant.

Conclusion

The Tenant's Application is wholly unsuccessful, as the Landlord provided sufficient evidence on a balance of probabilities to establish the validity of the One Month Notice. The Landlord is awarded an Order of Possession for the rental unit.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days 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 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: October 02, 2020

Residential Tenancy Branch