



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI, OLC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- disputation of a rent increase from the landlord, pursuant to section 42; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant served the landlord with his application for dispute resolution via registered mail. I find that the tenant's application was served in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue -Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and the continuation of this tenancy is not sufficiently related to any of the tenant’s other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant’s claims with leave to reapply except cancellation of the One Month Notice and recovery of the filing fee for this application.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant’s application is dismissed or the landlord’s Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2017 and is currently ongoing. The tenant sublets the subject rental property to subtenants.

Monthly rent in the amount of \$3,000.00 is payable on the first day of each month. A security deposit of \$1,500.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord posted the One Month Notice, with an effective date of September 30, 2020, on the door of the subject rental property on August 16, 2020. The tenant testified that his subtenants informed him of the One Month Notice on August 17, 2020.

The One Month Notice states the following reasons for ending the tenancy:

- 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.

The One Month Notice provides the following details of cause:

1. May 1, 2020 Friday night 20-30 people out door party till 1:00 a.m. next day till music loud. I phone [the tenant] at 11:00 p.m. and warned him no party allowed after 11:00 p.m. [The tenant] ignored my warning and told me go ahead to report to police.
2. July 4, 2020 Sat over 100 people at backyard. Part from 5:00 p.m. – 5:00 a.m. next day with loud music. My next door tenant [A.] warned them. [Tenant] kept on ignoring.
3. Aug 8, 2020 Sat 50-70 people party from 4:00 p.m. – 5:00 a.m. next day with loud music. [Tenant] still ignoring the warning.

The landlord testified that the above information was provided to her by the next door neighbour. The landlord entered into evidence an email from the neighbour stating same.

The landlord testified that the subtenants have continually thrown large parties at the subject rental property during COVID 19 and against public health rules.

The landlord entered into evidence an email from the neighbour of the subject rental property to the landlord dated August 9, 2020. The email states in part:

Last night, [the subject rental property] had another large outdoor party that lasted until 5 am and kept me awake until 5 am.

I called the police at 1 am to ask if they could shut the party down, and asked if the people or the lease holder would be fined for breaking the covid rules about gatherings and lack of social distancing, plus the noise and music.

I was told that not only would the lease holder get a fine, but the property owner (YOU) would also be fined and may also be held liable if anyone at the party gets covid.

I chose not to have the police attend, I refused to give the address of the party.

This is the last time I will tolerate late night party's and disturbances from the tenants of your rental property. This is not the first time this has been brought to your attention....Please do your due diligence as a property holder and landlord to ensure that loud outdoor parties and gatherings do not occur in the future.

The landlord entered into evidence her responding email dated August 9, 2020 which stated in part:

Thank you for your email. But next time go ahead to inform the police and don't worry about the fine. I warned them already last time. They don't care then leave us no choice to report.

The landlord testified that after she was notified of the parties, she called the tenant but he refused to take her calls. The landlord testified that she did not have the tenant's email address and so mainly communicated with him via text. The landlord entered into evidence the following text message to the tenant:

- July 5, 2020-
 - Landlord: Its [your landlord]. Our neighbour complain you had a party last night till this morning its warning. Next time will call the poclice [sic]
 - Tenant: Go ahead
- August 16, 2020-
 - Landlord: I just sent you an move out notice due to you party too much. Pls arrange the move out before sep 30
 - Tenant: Sorry. I cannot.

- Landlord: You have to I already warned you not having parties that disturb the neighbour and even during covid 19 period you kept on having party and ignoring my warning. You leave me no choice but end our tenancy.
- Tenant: I will investigate and get back to you this is the first time I heard about this. I will contact you back tomorrow with more information. Sorry about this.
- Landlord: I text you even call you in may, you told me to go ahead to report to the police. Sorry I have to vacant you this time.
- Tenant: Yes the police is correct to call but I never knew so many people party. I will find out. I though you said party it was like 6 people. That is common. I wish you would have sent me the information that it was that many people we would have kicked those people out next day.
- Landlord: Even less people you can not have party till 5am next day. Law is after 11 pm no party allowed I called you may1, you ask me go ahead to report to police. Pls check your text message. I do not like your attitude.

The tenant testified that the only party that occurred at the subject rental property was on July 4, 2020 and that no more than 20 people were in attendance. The tenant's application for disputer resolution states that the subtenants "had a gathering of no more than 40 people". The tenant testified that he spoke with the subtenants who agreed not to host anymore parties. The tenant testified that the subtenants are young and that since young people can't out downtown because of COVID 19, they host house parties and that it is common is the subject rental City.

The tenant testified that the landlord cannot know how many people were at the subject rental property because she was not there, and the neighbour was only at the fence.

Analysis

Upon review of the One Month Notice, I find that it conforms to the form and content requirement of section 52 of the *Act*.

Section 47(1)(d) of the *Act* states:

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;

Based on the testimony of the parties and the documents entered into evidence, I find that, on a balance of probabilities, the subtenants repeatedly hosted large parties, between 40 to 100 people in attendance, at the subject rental property.

The tenant's testimony regarding the number of people at the July 4, 2020 party is contradicted by the tenant's submissions in his application for dispute resolution. I find the August 9, 2020 email from the neighbour to be compelling and the tenant has not provided a motive for the neighbour to lie. I find that a neighbour would have a good ability to determine the number of people next door, even from the fence. I find that the tenant's testimony sought to purposefully mislead myself as to the number of parties and the number of people at those parties, in an attempt to keep this tenancy intact.

I find that the subtenants, who were permitted on the subject rental property by the tenant, unreasonably disturbed the landlord by hosting large parties, contrary to section 47(1)(d)(i) of the *Act*.

I find that the subtenants seriously jeopardized the health and safety of the landlord, the neighbours and all occupants and party attendees at the subject rental property, by hosting large social gatherings during a global pandemic, contrary to section 47(1)(d)(ii).

I find that hosting large parties put the landlord's property at significant risk contrary to section 47(1)(d)(iii).

Pursuant to my above findings, I dismiss the tenant's application to cancel the One Month Notice and uphold the One Month Notice.

Section 55 of the *Act* states that 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:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since I have dismissed the tenant's application and upheld the landlord's One Month Notice, I find that the landlord is entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: October 13, 2020

Residential Tenancy Branch