



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On August 22, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

This hearing was scheduled to commence via teleconference at 11:00 AM on November 9, 2020.

The Tenant did not attend at any point during the 32-minute hearing. Both Landlords attended the hearing. All parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:32 AM. Only the Respondents dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in and I also confirmed from the teleconference system that the only party who had called into this teleconference were the Landlords.

The Landlords advised that the Tenant did not serve them the Notice of Hearing or evidence package, and they only received the hearing information when they contacted the Residential Tenancy Branch. As the Tenant did not attend the hearing, and as she did not serve the Notice of Hearing package in accordance with Rule 3.1 of the Rules of Procedure, I dismiss her Application without leave to reapply.

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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords advised that the tenancy started on April 1, 2020, that rent was established at \$1,725.00 per month, and that it was due on the first day of each month. A security deposit of \$850.00 was also paid. A copy of the tenancy agreement was not submitted as documentary evidence.

The Landlords confirmed that all three pages of the Notice were served to the Tenant by registered mail on August 16, 2020. The reasons the Landlords served the Notice are because:

- The Tenant is repeatedly late paying rent.
- The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlords.

- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the Landlords.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

They advised that the Tenant has been creating ongoing noise disturbances since the start of the tenancy and has been disrupting the quiet enjoyment of the other tenants that the Landlords rent to. They stated that these tenants are impacted daily by the yelling between the Tenant, her ex-husband, and their daughter. These incidents happen at all hours of the day and the other tenants have made complaints of yelling occurring recently at 2 AM or 4 AM in the morning. In addition, the Tenant's dog has been barking frequently throughout the day as well. They also added that the tenants have made complaints to them because the Tenant will often cook at 2 AM in the morning and set off the smoke alarm. The Landlords advised that they provided the Tenant written warnings regarding her behaviour.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlords' One Month Notice to End Tenancy for Cause to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

As the Tenant did not serve the Notice of Hearing package, and as the Tenant did not attend the hearing, I have dismissed her Application to dispute this Notice in its entirety. However, pursuant to Section 55(1) of the *Act*, in order to grant the Landlords an Order of Possession, I must still consider the validity of the Notice.

I find it important to note that the Landlords may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads 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:*

(b) the tenant is repeatedly late paying rent;

(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;

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

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

(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;

With respect to the reasons on the Notice, the Landlords provided undisputed, solemnly affirmed testimony that the Tenant has continued to cause unreasonable disturbances in the rental unit, despite written warnings from the Landlords, that have been affecting the quiet enjoyment of other tenants on the property. I am satisfied from the consistent evidence that the Landlords have sufficiently substantiated the ground for ending the tenancy under the reason that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlords.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, and as the Tenant's Application has been dismissed, I uphold the Notice and find that the Landlords are entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order 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: November 9, 2020

Residential Tenancy Branch