



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Affordable Housing Charitable
Association and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

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.

The landlord's agent, the tenant and the tenant's advocate 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 agreed that the landlord was served with the tenant's application for dispute resolution. I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*.

Both parties agree that they were each served with the others evidence. I find that the parties were sufficiently served for the purposes of this *Act*, pursuant to section 71 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*.

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. 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 January 1, 2018 and is currently ongoing. Monthly subsidized rent based on income in the amount of \$320.00 is payable on the first day of each month. A security deposit of \$300.00 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.

The landlord testified that a One Month Notice to End Tenancy for Cause (the "Notice") was posted on the tenant's door on October 19, 2020. The Notice was entered into evidence and has an effective date of November 30, 2020. The tenant testified that he received the Notice on October 19, 2020.

The Notice states the following reason for ending the tenancy:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant's application for dispute resolution was made on November 2, 2020.

The landlord testified that the neighbours on either side of the tenant have complained about the excessive noise level coming from the tenant's unit at all hours of the day and night. The landlord entered into evidence written noise complaints against the tenant from the tenants on either side of the tenant, dated as follows:

- September 11, 2018;
- December 9, 2019;

- April 12, 2020 X2;
- May 26, 2020;
- May 27, 2020;
- October 6, 2020; and
- October 28, 2020.

The agent testified that the tenant was sent the following letters in response to the noise complaints:

- September 12, 2018- memo to tenant re noise complaint;
- December 18, 2019- warning letter to tenant;
- April 16, 2020- breach letter to tenant;
- June 3, 2020- warning letter to tenant; and
- October 13, 2020 breach letter to tenant.

The April 16 breach letter states:

As the Landlord of the premises noted above, [the landlord] is with this letter giving you WRITTEN NOTIFICATION that we consider CONDUCT to be a MATERIAL TERM of the tenancy agreement we have with you.

We received complaints against you. On Saturday, April 11, 2020 around 9:00 pm you started creating disturbance that ceased around 11:30 am on the next day. Around midnight you were outside yelling and swearing until 2:30 am, The Police was called in and they tried to talk to you, but you did not cooperate, and continued behaving loudly and disruptively. Your conduct has been upsetting and distressing your neighbours. This was not the first time you behaved this way. IN December 2019 we sent to you a letter addressing a similar matter and we advised you to correct your behaviour if you desired to continue th tenancy. On April 11, 2020 you caused disturbance and your actions negatively affected your neighbours' right to peaceful quiet enjoyment of the residential property and this will not be tolerated. You have breached a material term of the tenancy agreement- CONDUCT- again.

Please consider this your WRITTEN NOTIFICATION that any further conduct related issues reported by either another resident or the Resident Manager will result in a One (1) Month Notice To End Tenancy being served upon you pursuant to section 47(1): (d)(i),(d)(ii), (e)(ii), (e)(iii), and (h)(i) of the Residential Tenancy Act, SBC, 2002. C78.

Section 17 of the tenancy agreement states:

CONDUCT. In order to promote the safety, welfare, enjoyment and comfort of other occupants and Tenants of the residential property and the Landlord, the Tenant or the Tenant's guest must not disturb, harass, or annoy another occupant of the residential property, the Landlord or a neighbour. In addition, noise or activity, including production of second-hand smoke, which in the reasonable opinion of the Landlord may disturb the comfort of any occupant of the residential property or other person, must not be made by the Tenant of the Tenant's guest, not must any noise be repeated or permitted after a request to discontinue such noise or behaviour has been made by the Landlord. The tenant or the Tenant's guest must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant of the residential property or other person at any time and in particular between the hours of 11:00 p.m. and 9:00 a.m.

The agent testified that a One Month Notice was not issued following the noise complaints received in May 2020, due to COVID 19 but the decision was made to issue the One Month Notice following the October 2020 noise complaints.

The tenant's advocate submitted that the tenant is not responsible for the noise and that the noise is coming from other units or a neighbouring townhouse complex. The tenant's advocate submitted that on one occasion the tenant's five-year-old daughter started banging on the drums, but this was stopped immediately.

The agent testified that noise complaints have not been lodged against other tenants but have consistently been lodged against the tenant.

Analysis

Rule 2.6 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office.

The tenant's fee waiver documents were submitted to the Branch on November 2, 2020. Pursuant to Rule 2.6 of the Rules, the tenant's application was made on November 2, 2020.

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant on October 19, 2020, in accordance with section 88 of the *Act*. I find that the Notice complies with section 52 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being November 30, 2020. As the tenant did not vacate the subject rental property on that date, I award the landlord a two-day order of possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the agent's testimony and the written complaints entered into evidence, I find, on a balance of probabilities, that the tenant is the source of the noise as indicated by the noise complaints.

Section 47(1)(h) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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;

I find that the tenant failed to comply with term 17 of the tenancy agreement which is a material term. I find that the tenant did not correct the situation within a reasonable time after receipt of the April breach letter. I dismiss the tenant's application to cancel the Notice due to the tenant's breach of section 47(1)(h) of the *Act*.

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:

- (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 find that since the Notice complies with section 52 of the *Act* and the tenant's application to cancel the Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

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: January 22, 2021

Residential Tenancy Branch