



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was reconvened from an original hearing on October 23, 2020 and an adjourned hearing on November 3, 2020 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order for repairs - Section 32.

Both Parties attended the reconvened hearing and were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its reasons?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order for repairs?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on December 17, 2016. Rent of \$1,269.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$575.00 as a security deposit. On August 28, 2020 the Tenant was given a one month notice to end tenancy for cause dated September 27, 2020 (the “Notice”). This date was set out in error and the Tenant

understands it was a typo that should read August 27, 2020. The Notice sets out two reasons with details included. The reasons stated on the Notice is that

1. The Tenant or a person permitted on the property by the Tenant has
 - a. significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - c. put the Landlord's property at significant risk; and
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective date of the Notice is September 30, 2020.

The Landlord states that the Tenant has breached a material term. The Landlord provides copies of warning letters dated July 2 and August 10, 2020 that were sent to the Tenant. The letters set out warnings in relation to noise and contact with other tenants.

The Landlord states that the Tenant has significantly interfered and unreasonably disturbed other tenants, some of who have moved out because of the Tenant's behavior. The Landlord states that on June 1, 2020 the Tenant was yelling while dropping water and bananas from its deck. On this occasion the Landlord received complaints from three other tenants about being disturbed by this noise. The Landlord states that on June 4, 2020 the Tenant was yelling outside its window to a stranger about another tenant in the building having mental issues. This other tenant overheard the yelling and reported it to the Landlord. The Landlord states that on July 6, 2020, while in the laundry room, the Tenant told another tenant that that tenant smelled. The Landlord states that the long-term tenant living above the Tenant's unit is moving out as the Tenant has for the past year been constantly knocking on this tenant's door. The Tenant also knocks on other tenants' doors leaving the tenants shaking from being so disturbed. The Landlord states that another tenant has moved out because of the

Tenant's harassment and interference. The Landlord provides a letter from this tenant as evidence. The Landlord states that the Tenant has said "if this building blows up it is not my fault". The Landlord states that this was taken as a threat to blow up the building and the police were called. The Landlord states that as a result of this that the Tenant has caused a significant risk to the property. The Landlord states that the Tenant has placed other tenants' rights to peaceful enjoyment of their units in serious jeopardy. The Landlord states that during the summer of 2020 the Tenant was screaming, hitting doors and on the street yelling at its daughter's father. The Landlord states that the Tenant humiliated another tenant by yelling that this tenant's ex-boss was staring at a body part of this tenant. The Landlord states that another neighbour heard this exchange.

The Landlord's Witness AW states that in April 2020 the Tenant made personal and verbal attacks on the Witness on a sometimes daily, weekly and monthly basis. The Witness states that in the week prior to the reconvened hearing of November 3, 2020 the Tenant hit the Witness's vehicle with a plastic container. The Witness states that the Tenant has called the Witness names and shouts at the Witness calling the Witness by name from the Tenant's window. The Witness states that she has been under extreme stress and has felt unsafe. The Witness states that the aggression by the Tenant has not been shown lately. The Witness states that it is moving out on December 1, 2020 because the Witness can no longer tolerate the situation. The Witness is concerned for its safety due to the Tenant approaching the Witness in the hallways and shouting out its window. The Witness states that it is thoroughly fed up and also hears the Tenant screaming and yelling in its unit. The Witness states that the Tenant used to yell at its daughter. The Witness states that there is rarely any noise from any other tenant's unit with only some walking sounds but never any talking sounds. The Witness states that the Tenant is excessively loud in its unit.

The Landlord states that the Tenant is constantly texting the Landlord, with 30 texts on one Sunday in late October 2020. The Landlord states that the Tenant also calls

repeatedly after hours. The Landlord states that some of the Tenant's complaints are nonsensical while the other are about the Tenant's neighbours. The Landlord states that as of the date of this last hearing it has lost 3 tenants and is at serious risk of losing another tenant and the building manager because of the Tenant's behavior.

The Tenant states that it has not been interfering with anyone all summer long as the Tenant has kept to its unit. The Tenant states that there is a lot of noise in the building and that the Tenant is triggered by vibrations from the noise resulting in the Tenant saying obnoxious things. The Tenant describes its behavior as its "last resort" towards dealing with the noise pollution it experiences. The Tenant states that normal behavior does not result in any change. The Tenant states that when it tries to distract itself from the noise and vibration the vibration simply adjusts and continues to irritate the Tenant. The Tenant states that the vibration won't stop until the Tenant does something foolish, or harmful or ridiculous. The Tenant states that it even loses control of its hands to peel a tomato when it hears the noise. The Tenant states that all rents have been paid. The Landlord states that they have not been overly concerned about the payment of rent.

Analysis

Section 47(1)(d)(i) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Given the Landlord's supported evidence of the Tenant's behavior and considering that the Tenant's testimony tends to support the Landlord's evidence I find on a balance of probabilities that the Landlord has substantiated that the Tenant has unreasonably disturbed other tenants in the building. As a result, I find that the Notice is valid for this reason. Given this finding no determination is required for the remaining reasons on the Notice. As the Notice is valid, I dismiss the Tenant's claim to cancel the Notice.

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Given the form and content of the Notice that was provided as evidence for these proceedings I find that Notice complies with section 52 of the Act.

Section 55(1) of the Act provides 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.

As the tenancy is ended, I dismiss the Tenant's claims for repairs and in effect the Tenant's application is dismissed in its entirety. As the Notice has been found valid and as the Tenant's application has been dismissed, I find that the Landlord is entitled to an order of possession effective 1:00 p.m. on January 31, 2021.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on January 31, 2021.

The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: January 22, 2021

Residential Tenancy Branch