



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The two tenants (hereinafter the “tenant”) filed an Application for Dispute Resolution (the “Application”) on November 4, 2020 seeking an order to cancel the One Month Notice to End Tenancy (the “One-Month Notice”) for cause. They also applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 26, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both the tenant and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

Both parties confirmed receipt of the evidence prepared by the other. The tenant received the prepared response package of the landlord “not less than seven days before the hearing” as per Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to an order to cancel the One Month Notice?

If the tenant is unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Is the tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The landlord provided a copy of the tenancy agreement in this matter. The tenancy started on March 31, 2019. Both parties verified that the amount of rent payable on the thirty-first of each month is \$1,850. As of the date of the hearing, the tenant still occupied the rental unit.

The tenant provided a copy of the One-Month Notice document. In the hearing, they verified that the landlord issued and served a three-page document. On page 3 details of the grounds indicated on page 2 were filled in by the landlord. These were: "repeated noise disturbances and repeated late payments of rent." The landlord issued this on October 30, 2020. The One-Month Notice specified the move-date for the tenant to be November 30, 2020.

On page 2 of the document, the landlord provided their reasons for issuing One-Month Notice:

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

In the hearing, the landlord presented their 17-page document that outlines reasons for each of the grounds: excessive noise and repeated late payments of rent. Additionally, the landlord presented an outline of local bylaws that apply to the occurrences of the tenant having a number of guests to their rental unit, and this affects the landlords who live in the adjacent unit on the same property. The landlord also presented photo evidence of "non respect of the non-smoking term attached to the tenancy agreement" as well as incidents of garbage messiness and the tenant's work equipment blocking common area pathways.

On the incidents of noise, the landlord presented details on a loud party that took place on September 15, 2020. During that party time, they messaged to the tenant and received no response. The evidence of the landlord contains their email to the tenant on September 22, 2020 outlining the specific point of a local noise bylaw, and a reminder to abide by these rules. In response to this, the tenant on September 23, 2020 gave a statement of apology.

The landlord also outlined another instance of noise on October 28, 2020 that was of a different nature. The landlord provided a recording of the interaction to give evidence on how intrusive the noise was to their own living space. The sound of this interaction was uncomfortable to the landlord's own family, lasting "1.5 hrs until past midnight."

The tenant responded to this evidence and testimony in the hearing to say things were “true, but highly exaggerated.” The September incident was really just a small gathering with four guests and the music “not as loud as they say it was.” The second event was only exacerbated by the poor insulation of the property, where they can often hear the landlord’s own pots in the kitchen and dragging of chairs.

The tenant stated they always went to the landlord to inquire how they could work on things together. In the case of the second complaint, they inquired why it went to the extreme of the landlord recording audio, from an initial text message. In their words: “this borders on harassment.” They also questioned the landlord’s use of cameras as monitoring devices. Overall, they feel these are the “only two complaints over the last two years.”

The landlord presented a table of late payments of rent, showing due dates, and actual payment dates with snap shots of times showing the actual time of the e-Transfer of payment of each month’s rent. In their evidence, they also presented the series of reminders regarding the payment due date. This was in the form of text messages and one letter.

In response to this, the tenant stated this was a “handful of times” within “minutes or hours after midnight”.

Analysis

The *Act* Section 47 states, in part:

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,

...

(3)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

The *Act* section 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the landlord issued the One-Month Notice pursuant to section 47 and I accept the landlord's evidence that they served this document to the tenant on October 30, 2020.

The *Act* section 52 provides:

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) . . . state the grounds for ending the tenancy,
. . . and
- (e) when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of section 52 regarding form and content.

The details in the landlord's evidence – referring to two separate instances with the tenant in the past – validate one of the grounds selected by the landlord on the One-Month Notice. This is where the tenant “significantly interfered with or unreasonably disturbed another occupant or the landlord”. I find the evidence provided by the landlord in support of this single ground validates the issuance of the One-Month Notice. I find the landlord provided ample warning to the tenant that the parties arriving to the unit, along with the associated noise, was causing a problem.

Additionally, I find the evidence shows the tenant presented late payments of rent in a repeating pattern throughout the tenancy. The tenancy agreement specifies the date on which rent is payable; moreover, the evidence of the landlord shows the tenant is not complying with this term of the agreement.

As an adjunct, but still relevant to the cause, are the tenant's handling of garbage, their intrusion on the walkway, as well as the continuance of smoking on the property. These constitute additional incidents of interference or disturbance with the landlord. There is evidence of the landlord bringing these matters to the tenant's attention on more than one occasion.

In line with section 47 criteria, I find the tenant's actions were those which “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.” The landlord has provided substantial evidence of the tenant's conduct and interactions with other residents that causes legitimate concern.

I find the One-Month Notice issued by the landlord on October 30, 2020 complies with the requirements for form and content set out in section 52 of the *Act*.

The *Act* section 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*. By this provision, I find the landlord is entitled to an Order of Possession.

Because the tenant was not successful in their Application, there is no award for reimbursement of the Application filing fee.

Conclusion

Under sections 55(1) and 55(3) of the *Act*, I grant an Order of Possession 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 *Act*.

Dated: January 27, 2021

Residential Tenancy Branch