



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VILLA ROSALMA and 1013773 BC
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: OPC, FFL
For the Tenant: CNR-MT, CNC

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Landlord filed a claim for:

- an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated September 21, 2020 (“One Month Notice”); and
- recovery of their \$100.00 Application filing fee.

The Tenant filed a claim for:

- more time to apply to cancel the 10 Day Notice to End Tenancy for Unpaid Rent;
- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent; and
- an Order to cancel a One Month.

An agent for the Landlord, A.M., (the “Agent”), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask

questions about the hearing process.

During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by posting them on the door of the rental unit on November 26, 2020. The Agent said she asked the building manager told her that the Notice was removed from the door; therefore, the Agent said this explains why the Tenant moved out on December 31, 2020. I also note that the Tenant had cross-applied against the Landlord’s Application and that her Notice of Hearing was issued to the Tenant on January 6, 2021.

Further, the Agent said that she was not served with anything by the Tenant in terms of the Tenant’s Application. Accordingly, I have not considered the Tenant’s Application or evidence in this proceeding.

I find that the Tenant was deemed served with the Landlord’s Notice of Hearing documents in accordance with the Act. I, therefore, admitted their Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

The **Tenant’s Application is dismissed without leave to reapply**, as the Tenant did not attend the hearing or submit any evidence.

At the start of the hearing, I asked the Agent for the legal name of the Landlord, as the name on the Application and tenancy agreement is not a legal entity. The Agent advised me of the legal company name of the Landlord, and therefore, I amended the Landlord’s name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed that the fixed-term tenancy began on April 5, 2020, with a monthly rent of \$1,450.00, due on the first day of each month. The Agent said that the Tenant paid the Landlord a security deposit of \$725.00, and no pet damage deposit, and she said that the Landlord still holds the security deposit.

The Agent said that the Tenant moved out on December 31, 2020, but did not give a forwarding address. The Agent said she does not have the Tenant's email address either; however, the Tenant still lived in the rental unit at the time the Landlord served her with the hearing documents, pursuant to the Act.

The Landlord submitted a copy of the One Month Notice into evidence. It was signed and dated September 21, 2020. It has the rental unit address, it was served by being posted on the rental unit door on September 21, 2020. It has the effective vacancy date of October 31, 2020. It was served on the grounds that the Tenant:

- has allowed an unreasonable number of occupants in the unit/site;
- 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 Landlord;
- the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:
 - damage the Landlord's property;
 - adversely affect the quiet enjoyment, security, safety, or physical well-being of other occupant; and
 - jeopardized a lawful right or interest of another occupant or the landlord; and
- breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the Agent said:

The One Month Notice was served based on a warning letter that I uploaded online. They created lots of noise, interfered with other tenants during the pandemic. They brought in guests; they were throwing boxes out of the windows.

Even the police was called several times. On May 28, 2020 they were given a warning letter about loud music, intoxication of guests outside, and disturbing tenants. They were bringing people in when knew weren't allowed to bring guests. And they were drinking and smoking.

My understanding is they had a roommate that left the apartment and no one to pay the full rent. They fell behind.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 28 of the Act sets out a tenant's right to quiet enjoyment of the rental unit, and states that tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, subject only the landlord's right to enter the rental unit in accordance with section 29, and use of the common areas for reasonable and lawful purposes, free from significant interference."

Policy Guideline #6 ("PG #6") states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be

established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Based on the Landlord's undisputed evidence of the Tenant causing repeated disturbances and risking the safety of others at the residential property, I find on a balance of probabilities that the Landlord has established that the Tenants breached other tenants' and occupants' right to quiet enjoyment of the residential property.

Section 47(1) of the Act sets out the grounds on which a landlord may end a tenancy for cause:

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:

...

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

...

(ii) has adversely affected or is likely to adversely affect the **quiet** enjoyment, security, safety or physical well-being of another occupant of the residential property;

Based on the evidence and authorities before me, I find the Landlord has proven on a balance of probabilities that the Tenant adversely affected the quiet enjoyment, security, safety, and/or physical well-being of another occupant(s) of the residential property. I also find that the One Month Notice is consistent with section 52 of the Act as to form and content. I, therefore, award the Landlord with an Order of Possession of the rental unit, pursuant to sections 47 and 55 of the Act.

Further, I award the Landlord with recovery of the \$100.00 Application filing pursuant to section 72 of the Act. The Landlord is authorized to retain \$100.00 of the Tenant's \$725.00 security deposit and return the remainder to the Tenant when she provides her forwarding address to the Landlord with a request for the return of the security deposit.

The Tenant's Application is dismissed without leave to reapply pursuant to section 62, as no one attended on behalf of the Tenant nor did the Tenant submit any evidence.

Conclusion

The Landlord claim for an order of possession is successful, as the Landlord provided sufficient evidence on a balance of probabilities to meet their burden of proof. I also award the Landlord recovery of the \$100.00 Application filing fee. The Tenant's Application is dismissed without leave to reapply, as no one attended on behalf of the Tenant, nor did the Tenant submit any evidence.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 15, 2021

Residential Tenancy Branch