



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, LAT, OLC

Introduction

On December 18, 2020, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to suspend or set conditions on the landlord's right to enter the rental unit or site, for permission to change the locks, and for an order for the Landlord to comply with the *Act* . The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”), the Tenant and the Tenant’s Legal Counsel (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters – Application Amended

Upon review of the Tenant’s application, it was noted that the Tenant had included a Notice to end tenancy in their evidence package and a written submission stating that they were requesting to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued December 11, 2020, in their application for these proceedings.

At the outset of these proceedings, both the Tenant and the Landlord confirmed that they had believed that this hearing was in regard to the Tenant’s dispute of a Notice to end tenancy.

The Tenant testified that they must have made an error in their application by not ticking the correct box to include a request to cancel this Notice; the Tenant requested that we proceeding in this hearing in regards to their request to cancel the Notice to end tenancy. Both parties also confirmed that they were prepared to proceed in this hearing to either defend or dispute the Notice to end tenancy.

Section 4.2 of the Residential Tenancy Rules of Procedure state the following:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to section 4.2 of the Rules for Procedure, I find it appropriate that the Tenant's application be amended to include a request to cancel a One Month Notice to End Tenancy for Cause (the Notice) issued December 11, 2020.

Preliminary Matters – Issues Severed

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as three other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claims to suspend or set conditions on the landlord's right to enter the rental unit or site, for permission to change the locks, and for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenant's claim to cancel the Notice.

Issues to be Decided

- Should the Notice issued on December 11, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The Landlord testified that they issued the Notice to end tenancy to the Tenant on December 11, 2020, by personal service. The Landlord submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- *Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:*
 - *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*
- *Breach a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Notice states that the Tenant must move out of the rental unit by January 31, 2021. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Notice was issued due to several noise complaints they received between March 2020 through December 2020, from the other occupants of the rental property. The Landlord submitted 22 complaints from these occupants into documentary evidence.

The Landlord testified that they spoke to the Tenant several times regarding these complaints and issued five written warnings, on March 18, 2020, May 20, 2020, June 17, 2020, September 29, 2020, and a final written warning on November 22, 2020. The Landlord submitted copies of the five written warnings into documentary evidence.

The Landlord testified that they received two more noise complaints about the Tenant on November 27, 2020, and December 8, 2020. Additionally, the Landlord also testified that they had been served with a petition signed by seven of the other occupants of the rental property, requesting that the Landlord evict this Tenant due to their loss of quiet enjoyment. The Landlord submitted a copy of the petition and the November 27, 2020, and December 8, 2020 noise complaints into documentary evidence.

The Tenant agreed that the incidents of excessive noise had happened but that the noise was caused by their child, who is disabled. The Tenant testified that due to the COVID-19 pandemic, their child's community care had been shut down, which had caused the child to be in distress and to act out, but that their child has now returned to community care and that there will be no further excessive noise incidents.

The Landlord testified that they had encouraged the occupants of the building to be mindful and respectful of one another during the COVID-19 lockdown but that the Tenant's neighbours have as much right to the quiet enjoyment of their rental unit as this Tenant had and that the noise caused by the Tenant was a significant loss of quiet enjoyment to the other occupants of the build.

The Landlord testified that they are seeking an order of possession due to the Tenant continuously disturbing the other occupants of the rental property.

The Tenants testified that they agreed the noise incident did happen but that they have corrected the problem and should be given a second chance.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice to End Tenancy on December 11, 2020. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenants had until December 21, 2020, to file their application to dispute this Notice. I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed her application on December 18, 2020, within the legislated timeline.

I accept the agreed-upon testimony of these parties that the Tenants did cause the noise disturbance that resulted in the noise complaints that I have before me in these proceedings.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me, and I find the emailed complaints, combined with the verbal testimony, to be a credible account noise incident that were caused by the Tenants between March to December 2020. I also find that the number of incidents of noise complaints constitute an unreasonable disturbance of the other occupants of the rental property.

For the reason stated above, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I must dismiss the Tenant's application to cancel the Notice issued December 11, 2020.

Section 55(1) of the *Act* states:

Order of possession for the landlord

55(1) *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 have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service of this Order on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from a tenant.

Conclusion

The Tenants' application to cancel the Notice, issued December 11, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **two Days** after service of this Order on the Tenants. Should the Tenants 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: March 17, 2021

Residential Tenancy Branch