



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Balfour Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR

Introduction

The tenant filed an Application for Dispute Resolution on November 27, 2020, seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”).

The tenant also filed a second Application on January 8, 2021 for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). This second Application was joined to the first and the matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 19, 2021.

Both the landlord and the tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Preliminary Matter

At the outset of the hearing, the landlord advised that the tenant paid the rent amount in full for the month of January 2021. The landlord had issued the 10-Day Notice on January 5, 2021. This was for unpaid rent for the month of January 2021, where the tenant did not pay the expected rent on time on January 1st. At the outset of the hearing, the landlord advised that the tenant then paid the rent amount in full for the month of January 2021. The tenant advised they paid the rent amount in full on January 10, 2021. The landlord confirmed this in the hearing.

I find as fact that the tenant paid the January 2021 rent in full. There is agreement that the full amount constitutes compliance with the *Act*. The tenant stated their desire to have the tenancy agreement fully restored.

For this reason, I dismiss the tenant's application for cancellation of the 10 Day Notice. In effect, the landlord has withdrawn the 10 Day Notice, being satisfied on the full payment of the January 2021 rent. For this reason, there is no end of the tenancy for unpaid rent.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice to End Tenancy for Cause?

Should the tenant be unsuccessful in cancelling the Notice, is the landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement for this tenancy that started on September 1, 2014. At the time of this hearing, the rent paid was \$1,150 per month. Both parties signed the agreement on July 30, 2014.

The tenant provided a copy of the One Month Notice document. The landlord stated they served this document on November 20, 2020 in person and the tenant confirmed this. This gives the move out date of December 31, 2020.

On page 2 of the document, the landlord provided the reasons that they issued this document:

- 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 a 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

On page 3 of the document, the landlord provided details:

Numerous events have all the emails on file and will submit them. Tenant bothers neighbour for everything. I gave [the tenant] a letter (which I have) that if [they] bothers new tenant at all [they] will be evicted. The new tenant was in there for a week and was already bothered by the actions of the tenants in [rental unit.] I have numerous emails from previous tenant(s) as well who have now moved on from this building because of the actions of the tenants in [rental unit].

Another tenant ("neighbour 1") in the building messaged the landlord on October 13, 2020 to advise that the tenant here called the police, making "a faulty police report." This tenant also passed on their knowledge of other incidents, one involving slashed vehicle tires, which they attribute to the tenant here. The police messaged to this neighbour 1 that they should stay away from the tenant here. Other incidents involving this neighbour 1 had the tenant here tampering with the mail slot, banging on the floor/ceiling later in the evening, standing outside the bedroom window, and ringing neighbour 1's buzzer at 1:41 a.m.

Another tenant ("neighbour 2") provided a longer email to the landlord on October 19, 2020. This outlines "constant harassment" from the tenant here. This sets out a longer history, where "for the past 5 years, the tenants . . . have continued to harass multiple tenants." This involves yelling and screaming, banging on doors and walls, scaring other tenants out of the building. This neighbour 2 outlines an incident from March 2020 where their own vehicle tires were slashed. They outlined there was also previous incidents of tire damage, stemming from the tenant here.

The landlord set out these concerns from early October to the tenant here in a letter dated October 7. They provided a piece from the *Act* that sets out a tenant's right to quiet enjoyment and advised of the possibility of a notice to end tenancy.

Another tenant ("neighbour 3") sent an email to the building management outlining their suspicion of the tenant here unplugging the washing machine mid-cycle. This is supplemented with photos.

The landlord also provided two letters from 2015:

- one letter dated March 9 has the landlord advising the tenant here to stop "banging on the walls in the early morning"

- one letter dated June 15 has the landlord responding to the tenant here after they made a complaint about another tenant – this bears a reminder to the tenant here that the building is older, and “normal sounds of living travel accordingly.”

The neighbour immediately above the tenant’s rental unit (“neighbour 4”) emailed the landlord on December 26, 2020 to outline an incident involving the police, where the tenant here alleged neighbour 4 upstairs kicked their door. Prior to this, there was an altercation with the tenant here, preventing this neighbour 4’s entry into the building. This neighbour 4 provided an email to the landlord setting out their main reason for moving out and finding a living arrangement elsewhere as being the tenant here. This outlines their concern with the tenant calling the police to follow up on “false accusations” which did happen previously. The tenant here also knocked on neighbour 4’s door at 11:40 p.m. on one occasion. This was for alleged noise emanating from the upstairs unit.

Finally, a comprehensive letter from the caretakers in the building sets out a number of incidents when the tenant here complained of other units’ noise level. This stems from November 2014, through to December 2020. There is a list of 9 incidents, either involving the tenant here complaining about others’ noise, or other building residents complaining about the tenant here.

The landlord provided a letter for this hearing dated January 8, 2021. As of that date, the tenant immediately upstairs from this tenant vacated their apartment. The landlord provided that there were 4 different tenants in that unit above since 2015. The landlord also states: “it is unethical to put a new tenant in that apartment knowing they will not get to have quiet enjoyment use of their apartment.” In a separate document, the landlord provided a list of these tenants, and set out that the average length for other unit rentals in the building is 5 – 7 years.

In the hearing, the landlord’s oral testimony consisted of their summary of the prepared evidence set out above.

The tenant provided a written statement dated November 27, 2020. In this letter they set out how their upstairs neighbour “started reacting very strongly” from spring 2020 onwards when public health measures were starting. This neighbour also “started producing excessive noise at night in the bedroom”. This neighbour above is the source of harassment to the tenant here. Their query to the landlord on this had the landlord send a response that was terse and informing the tenant that they could be facing an eviction.

In another written piece dated February 4, 2021, the tenant presented that the landlord's evidence for this hearing is "twisting the facts, false information, rumours, unproven accusations and serious defamation". From the tenant's perspective, none of the claims made by the landlord were brought to the tenant's attention in the entire time of their five-year tenancy. This is based on "defamatory rumours". The tenant also responded to other pieces of the landlord's evidence, pointing to rumours and accusations from other residents in the building. One paragraph from the letter sums up the tenant's overall position in this matter:

[The landlord's] case is not made in good faith and with a single purpose to find evidence that is not there, otherwise, we would have a warning from the company over the last 5 years that they have been managing the building, but there was absolutely no interaction or warnings of any kind. We have never done things that they are accusing us of doing.

Elsewhere in this submission, the tenant emphasizes that their child has a disability, and all of the other residents' conduct causes strain that continues straight through January 2021.

The tenant also submitted their letter to the landlord dated December 9, 2020 wherein they describe a serious incident of another resident yelling to their spouse, with the other resident physically blocking their spouse's entrance to the building. This is the incident that involved the police.

In the hearing, the tenant gave their testimony which summarized and reiterated points made in their written submissions. They responded with the same points to the charges of three other neighbours in the building. They presented that a resident building caretaker is the source of many problems in creating rumours and falsehoods. Further, they reiterated that these issues coming forward are all more recent, coming up in 2020.

The tenant did present in the hearing that they "always try to approach directly." This involves meeting new neighbours directly, always trying to resolve issues directly. Further, this tenant presented that they would also introduce themselves to any new neighbours and ask the new neighbours to raise any issues of noise or other disturbance directly.

Analysis

The *Act* s. 47 states, in part:

(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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,

. . .

(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. . .

The *Act* s. 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 s. 47 and I accept the landlord's evidence that they served this document to the tenant on November 20, 2020.

The *Act* s. 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 s. 52 regarding form and content.

The details found in the landlord's evidence – referring to 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 presented by the

landlord in support of this single ground validates the issuance of the One-Month Notice.

There is evidence that the landlord provided warning to the tenant here that their conduct was disturbing to others. The evidence shows that matters with this tenant were tracked as far back as 2015 when the landlord advised the tenant to stop banging on the walls. Warnings from the landlord continued in 2020 when matters intensified. I give weight to this evidence and the fact that the landlord was able to provide information about particular communication from 2015 lends veracity to their claims.

The most serious incident involving the tenant is that which caused the upstairs neighbour to leave in January 2021. This was even after the landlord issued a notice to end tenancy. I find that any matter that requires a visit from the police is serious enough in nature that it constitutes a disturbance to others. The incident here involved immediate forced contact with another resident in the building. I find this certainly constitutes interference and disturbance.

Reciprocally, the evidence shows the tenant here called the police so that the police could address their complaints of other neighbours. Based on the continual pattern of the tenant's trying to address matters of noise from their neighbours, this visit from the police constitutes another form of disturbance to another occupant. Additionally, there is a pattern of the tenant's complaints about others' noise; I find this shows the issue is definitively ongoing. I also find on a balance of probabilities that the problem will not abate.

Additionally, I find it more likely than not the tenant here was the individual who interfered with another resident's laundry. This adds to the overall picture.

While the tenant pointed to the length of tenancy, and past interactions they have had with other residents in the building, I give more weight to the evidence of the landlord here to show that there has been a sustained pattern of interference or disturbance, stemming from this tenant. I give weight to the landlord's evidence that there is a higher frequency of neighbours moving out from the upstairs unit because of the tenant's conduct.

In line with s. 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 November 20, 2020 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 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 s. 52 of the *Act*. By this provision, I find the landlord is entitled to an Order of Possession.

Conclusion

Under s. 55(1) and s. 55(3) of the *Act*, I grant an Order of Possession effective 1:00 p.m. on March 31, 2020. 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 s. 9.1(1) of the *Act*.

Dated: March 10, 2021

Residential Tenancy Branch