



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, ERP, RP, OLC, FFT

Introduction

On December 21, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One Month Notice to End Tenancy for Cause, to request monetary compensation, to order the Landlord to make regular and emergency repairs, to order the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and his agents, and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matter - Evidence

Both parties agreed that Landlord’s documentary evidence was exchanged amongst parties, pursuant to the Act.

The Tenant acknowledged that he served the Notice of Dispute Resolution Proceedings to the Landlord; however, did not serve the 32-page evidence package that the Tenant submitted to the Residential Tenancy Branch on March 15, 2021. The Tenant stated that the 32-page evidence package was mostly just text conversations between him and the Landlord and that the Landlord should already have that evidence.

The *Residential Tenancy Branch - Rules of Procedure 3.5* state that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each

respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

In this case, I find the Tenant did not serve the Landlord with the 32-page evidence package, pursuant to the Rules of Procedure. As such, I find that the evidence is inadmissible for this hearing. I did clarify for the Tenant that he could, if he chose, reference the text messages through his testimony during the hearing; however, that I would not be accessing the document that he had submitted.

Preliminary Matter - Issues

The Tenant submitted six separate claims as part of this Application, and I was aware that we would not have the time to get to all of them during today's hearing. I asked the Tenant to prioritize the issues that he wanted to address in this hearing; he stated that he wanted to address the request to cancel the One Month Notice to End Tenancy. For these reasons, I dismiss the Tenant's request for monetary compensation, to order the Landlord to make regular and emergency repairs, and to order the Landlord to comply with the Act, with leave to reapply in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated December 18, 2020, (the "One Month Notice") be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on November 23, 2020. The rent was \$1,600.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$800.00. There was an addendum attached to the Tenancy Agreement and it contained 17 extra terms including no smoking in the suite; no additional tenants; and, no pets. Both parties signed the Tenancy Agreement.

The residential property included an upstairs suite where the Landlord lived, and two separate rental units in the basement, one being a two-bedroom suite being rented by the Tenant.

The Landlord provided undisputed testimony that he served the One Month Notice to the Tenant in person, on December 18, 2020. The Tenant did not accept the One Month Notice, so the Landlord posted it on the Tenant's door. The Tenant became uncooperative and the Landlord called the police to attend. The police intervened and served the Tenant the One Month Notice.

The Landlord testified that the One Month Notice had an effective move-out date of January 20, 2021. The reasons for the end of the tenancy included:

- 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 adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord.
- Breach of a material term of the Tenancy Agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord submitted that the Tenant was verbally abusive towards the other occupants in the residential property and the Landlord. The Landlord stated they had issues with the Tenant disturbing other occupants by partying, arguing and playing loud music; that the Tenant had unauthorized guests move into the rental unit; and, that the Tenant was smoking in the rental unit.

The Landlord submitted that the Tenant, on December 3, 2020, confronted the other occupants in the residential property and used abusive language and racist remarks while yelling at them. The police were called to de-escalate the situation. The Landlord submitted witness statements from the other tenants to support that they were fearful for their safety and that they ended their tenancy with the Landlord as a result of the Tenant's constant disturbances that included loud music, partying, loud arguments, fighting, foul language and threats.

The Landlord submitted various videos on dates after the One Month Notice was served and stated that they are examples of the Tenant making racist remarks towards the Landlord, of the Tenant loudly arguing and swearing at another person in the rental unit, and of the Tenant playing loud instruments and loud music.

The Landlord stated that they attempted to work with the Tenant, tried to convince him to stop smoking in the rental unit, to pick up his cigarette butts from out back of the unit, to respect the noise levels; however, the Tenant would regularly respond in an abusive manner, use racist remarks and continued to smoke both weed and cigarettes in the rental unit.

The Landlord stated that the Tenant did pay rent for April 2021. The Landlord is requesting an Order of Possession for the rental unit.

The Tenant testified that when he first moved into the rental unit, he advised the Landlord that his son might be moving into the second bedroom and that the Landlord knew about that possibility. The Tenant stated that his son did move into the rental unit with him.

The Tenant agreed that he smoked outside of the rental unit but denied smoking inside the unit.

The Tenant agreed that he played guitar, but it was only as loud as the TV. When the police attended the rental unit, they just told the Tenant to “keep it down”.

The Tenant did acknowledge that he had yelled at the Landlord because they were harassing him and taking pictures of him and his guests.

Analysis

The Landlord has served the One Month Notice on the Tenant based on sections 47(1)(d) and 47(1)(e) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions significantly interfered with or unreasonably disturbed another occupant. Furthermore, in relation to section 47(1)(e), that the activities of the Tenant adversely affected the quiet enjoyment, security safety, or physical well being of another occupant and these actions were illegal. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the One Month Notice are valid and that the One Month Notice complies with section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with section 55 of the Act.

The Landlord has provided video evidence of the Tenant's abusive behaviour and making racist remarks towards the Landlord. The Landlord has also provided testimony and a statement from the occupants who used to live beside the Tenant that indicate the Tenant has been interfering and unreasonably disturbing both the occupants and the Landlord. Specifically, that the Tenant has caused disturbances by partying late into

the night, having loud arguments that would keep the occupants awake at night, and by swearing and being abusive towards the other occupants, including making racist remarks.

I accept the Landlord's evidence that the occupants that lived beside the Tenant were intimidated and ended their tenancy with the Landlord as a result of the Tenant's behaviour. I find the Landlord's video evidence compelling and upon review of the parties' evidence and based on a balance of probabilities, I find that the Tenant has significantly interfered with and unreasonably disturbed other occupants and the Landlord, contrary to section 47(1)(d) of the Act. As such, I find that at least one of the reasons set out in the One Month Notice are valid.

I dismiss the Tenant's application to cancel the 10 Day Notice without leave to reapply.

Section 52 of the Act requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the One Month Notice, issued by the Landlord on December 18, 2020, complies with the requirements set out in Section 52.

I have dismissed the Tenant's Application and found that the One Month Notice is compliant with the Act and at least one of the reasons set out in the One Month Notice are valid. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession. As the Tenant paid to use and occupy the rental unit for the month of April 2021, I grant an Order of Possession for April 30, 2021.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution to cancel the One Month Notice.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession to be effective on April 30, 2021 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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 *Residential Tenancy Act*.

Dated: April 07, 2021

Residential Tenancy Branch