



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT
 OPC, FFL

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). The matter was set for a conference call.

The Tenant filed to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on November 5, 2020, to request an order for the Landlord to comply with the Act and to recover the filing fee for this application.

The Landlord filed to enforce a One Month Notice to End Tenancy for Cause (the “Notice”) issued November 5, 2020, and to recover the filing fee for his application.

The Landlord’s agent, property manager, and caretaker (the “Landlord”) attended the hearing. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. As this proceedings took place due to the previous adjourned hearing, and it was the Residential Tenancy Branch that served the Tenant with the Notice of Hearing documents, I find that the Tenant had been duly served in accordance with sections 89 and 90 of the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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.

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 is described in this Decision.

Issues to be Decided

- Should the Notice issued on November 5, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to an order for the Landlord to comply with the Act?
- Is the Tenant entitled to the return of their filing fee?
- Is the Landlord entitled to the return for their filing fee for this application?

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.

The tenancy agreement shows that this tenancy began on July 4, 2019, as a month-to-month tenancy. Rent in the amount of \$850.00 is to be paid by the first day of each month, and that the Landlord collected a \$425.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Notice records that the Landlord served the Notice to end tenancy to the Tenant on November 5, 2020, by posting the Notice to the front door of the rental unit. 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

The Notice states that the Tenant must move out of the rental unit by December 12, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute

the Notice is not filed within 10 days, the Tenant would be presumed to have accepted 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 persistent bad behaviour of the Tenant towards the Landlord, the Landlord's staff, and the other occupants of the rental property.

The Landlord testified that they had received three noise complaints about the level of music coming from the Tenant's rental unit. The Landlord submitted three complaint statements into documentary evidence.

The Landlord testified that on October 13, 2020, when a contractor was attending the rental unit to take measurements, the Tenant became verbally abusive towards the property maintenance person who was in attendance with the contractor, calling them incompetent and swearing at them. The Landlord testified that after verbally abusing the property maintenance person, the Tenant proceeded to the hallway, where they got into an altercation with another occupant of the building who was intervening to defend the property maintenance person. The Landlord submitted four witness statements for this incident into documentary evidence.

The Landlord witness (B.G.) testified that they work as a building cleaner for the Landlord, that it was their job to conduct COVID-19 cleaning throughout the building, including cleaning all surfaces, walls, door handles and common areas. The witness testified that they make two cleaning passes through the building each day. The witness testified that the Tenant verbally abused them during their cleaning, calling them names and telling them to "F-off" when they were cleaning the vicinity of the Tenant's rental unit. The witness testified that on one occasion, the Tenant followed them and that they had to call Ith police as they were concerned for their safety.

The Landlord testified that the Tenant is also refusing to wear a mask in common areas of the rental property as required due to the COVID-19 pandemic. The Landlord submitted a video of the Tenant into documentary evidence.

The Tenant submitted no documentary evidence and did not attend the second hearing date to provide testimony in this case.

Analysis

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

I find that the Landlord posted the Notice to End Tenancy to the front door of the rental unit on November 5, 2020. Pursuant to section 90 of the Act, a notice served by this method is deemed received three days after it was posted. Therefore, I find that the Tenant was in receipt of this Notice on November 8, 2020, three days after it was posted to the front door of the rental unit.

Pursuant to section 47 of the Act, a tenant has ten days to dispute this Notice, stating 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 November 18, 2020, to file their application to dispute this Notice. I have reviewed the Tenant's application for dispute resolution, and I find that the Tenant filed her application on March 12, 2020, within the legislated timeline.

I have carefully reviewed the testimony provided during these proceedings and the documentary evidence that I have before me in this case, and I find the sworn testimony offered by the Landlord, the Landlord's witness, and signed complaints from the other occupants of the rental property to be a credible account of the ongoing actions and behaviour of this Tenant. I also find that the actions and behaviour of the Tenant, detailed in the evidence before me, would have been unreasonably disturbing to the other occupants of the rental property.

For this reason, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice dated November 5, 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 Tenant's 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 not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

As this tenancy is ending in accordance with the One-Month Notice, I find that there is no need to address the Tenant's additional claim for an order for the Landlord to comply with the *Act*.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, dated November 5, 2020, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **2 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.

The Landlord is granted permission to retain \$100.00 from the security deposit for this tenancy.

The Tenant's application for an order for the Landlord to comply with the *Act* and to recover their filing fee are dismissed.

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 19, 2021

Residential Tenancy Branch