



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF MENNONITE HOUSING SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 26, 2021 ("One Month Notice"), and an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. However, during the hearing, the Agents confirmed that they had not served a 10 Day Notice on the Tenant; therefore, we considered only the One Month Notice in this hearing.

The Tenant and two agents for the Landlord, J.L. and E.C. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

I asked the Agents for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent confirmed the name in the tenancy agreement as the correct name of the Landlord. Accordingly, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2020, with a monthly rent of \$375.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit.

The Parties agreed that the Landlord served the Tenant with the One Month Notice, which was signed and dated February 26, 2021, which has the rental unit address, and which was served by taping it on the rental unit door on February 26, 2021. The One Month Notice has an effective vacancy date of March 31, 2021, which is automatically corrected to April 30, 2021 by the Act. The One Month Notice was served on the grounds that:

- the Tenant or a person permitted on the property by the Tenant has
 - ▶ significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - ▶ seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the Tenant has not done required repairs of damage to the unit/property; and
- the Tenant breached 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 Agents said:

Our primary concern is the welfare of our tenants. This only came to our attention when a tenant came to us and said she was assaulted. We checked the video feed. Community and zero tolerance are important in our buildings – there's no reason for anyone to put their hands on or impede anyone else in the building. We find it important to make a statement and this behaviour is not acceptable. We have acted on this basis in the past, and it was enough to serve an eviction notice.

In their written submissions, the Landlord provided the following email, dated October 28, 2020, from the Community Development Coordinator, A.U.(G.) to the Agent, E.C., which states:

[The other tenant] was just here today, still shaking when we are talking about [the Tenant] and the incident that happened in the elevator. She was asking if he would get evicted because [the Tenant] kept banging the walls at night.

The Tenant said:

I have a statement regarding the incident: You would have to view the footage. It was very late, and I was struggling to fall asleep, because of the laneway noises and noises in the hallway. I got up to locate the source of the disturbance. I saw her coming from the elevator. She was positioned on the ground on the elevator floor. I entered and stumbled it was clearly unintentional. I didn't see her until I stepped in. There was no altercation afterwards. Instead, I reached out my hand to help her up. There is no basis for a charge of assault against me.

In answer to whether the police were called to this incident, the Agents said:

Yes, they were. We encouraged, based on how impacted [the other tenant] was by the event, encouraged her to follow up to the police. The tenant talked to me and she gave me a file number. I followed up with the police; they had a court date. I'm not sure if the Tenant attended, but a restraining order was made against him to not have anything to do with the tenant.

The Tenant said:

I was quite surprised and shocked. The police got involved, but there was ultimately no arrest and no conviction. I attended to all demands and the police did not show up in court. My lawyer showed up and my name was not even on the board to attend the court - just on the police summons. There was no arrest and no conviction, ultimately. I followed the rules and have had no contact with the claimant. It's been 10 months and there have been no reasons for concern during that time. In mid-February, she's come to my door with coffee. I go for coffee every morning, so she knows my routine.

In the video provided by the Landlord of the incident in the elevator between the Tenant and the other tenant, I saw the following:

The other tenant enters the elevator, puts her cane and a bag down on the floor, as the door almost closes. However, the Tenant puts his hand on the door before it closes completely and opens the elevator door. He then walks into the other tenant, knocking her over with his knee. After a pause, the Tenant grabs the other tenant's right arm to pull her up, as she takes her cane off the floor. The two talk, with the other tenant still crouching down. She then exits, as the Tenant looks out the elevator door in the direction she went, talking after her. The Tenant stays in the elevator for a few minutes, pushing buttons, as the door opens and closes. The other tenant can be seen walking past the elevator, going in the other direction. The Tenant steps out of the elevator, looking in the direction that the other tenant went, as the video ends.

The Landlord submitted a copy of a letter written to the Tenant from the Agent, E.C., dated February 26, 2021. This letter states:

Dear [Tenant],

When you came to live at [residential property] you agreed to live by the guidelines and conditions set out in the tenancy agreement and crime free

addendum.

It has come to our attention that you pushed over a tenant in the elevator with your knee. We have reviewed footage of the incident and it is clear that there was no need for you to interact with this tenant that way. Further to that, we have incident reports from staff in which you on June 26, 2020 and October 29, 2020 were shouting at the staff and have a negative reaction with them.

Please see section 15 in your tenancy agreement that you signed when you moved in.

15. Conduct

Residents will not do or permit anything to be done in the rental unit or the residential property that is obnoxious, objectionable, illegal, or offensive, not to allow anything to be done which would be come a nuisance or cause damage, interference or injury to the rental unit, residential property, any other resident.

These behaviours are breach of your tenancy agreement and is cause for eviction.

We are enclosing a '30 Day Notice to End Tenancy for Cause' effective March 31st, 2021.

For [Landlord]
[E.C.]
Associate Operations Manager
cc. tenant file

The Agent said:

We have had reports included in the evidence, as well, where [the other tenant] has said that she has felt harassed by him banging on the walls. She's concerned for her safety at times. I was just reading something she reported to our support worker: '[the other tenant] is here shaking – he kept banging the walls at night.'

Also, there's a report of inappropriate behaviour with community support workers. And a difficult action where [the Tenant] was quite rude with a group of staff over

going out over a fire drill – why they didn't go to; it ended in difficult behaviour, with all things recorded there.

The Tenant said:

The letter is defamatory and not true – the letter the employee submitted to [the Agent] was not true. I went down there to throw some garbage out, and the fire alarm was ringing, so I asked them what's going on, and why isn't anybody leaving the building? I was concerned I had just moved in to a new place - making adjustments to a new place. I was just concerned about the loud fire alarm. And normally people leave the unit. They were just sitting there giving out flu shots. Which is nice, but when the fire alarm is going, you leave the building.

The employee letter was quite disturbing, because I did not say the things that are said in that letter. It's absurd, ridiculous. Saying I had sexual desires about a smell? I was complaining about the smell of garbage, because it was outside my door; I was trying to tell the staff about that. Somehow, she conjured it up that it was a sexual trigger for me. She sent that documentation to my minister without asking me, which I found very disturbing. It's completely false and not true, and I am offended. Maybe I was in the moving in process, and with the fire alarm sounding, maybe I was somewhat excited a little, but nothing like they claim.

The Landlord submitted a copy of an email from a Community Development Coordinator at the residential property dated October 29, 2020, which included the following:

Hi Team,

I just want to file this incident that happened in the Garden room during flu shot hours (I was with [K.] and the Pharmacist). [The Tenant] went down to throw something then saw us and rudely asked us why we didn't go out during the fire alarm in the building. [K.] said that the maintenance already told us that everything was under control and he kept going on about how bad the noises are, the staff does not care, people are dying here etc. When he came back, he rudely interrupted our conversation saying the same things and he asked me to meet him – I have a busy schedule until next week so I declined. He didn't take it easily so he sarcastically said that 'oh your busy but this building is **f word** going down!' then left right away. The ladies were stunned as I am but this is [the Tenant] and I know his behaviour. He knows that he is not allowed to meet me

because of the past incident and I found his behaviour different when [M.] was with me this morning before [K.].

Also, [the other tenant] came to my office today and she said that [the Tenant] won't stop harassing her and wont stop banging the walls so I told her to call the police if she feels threatened.

Regards,
A.U.(G.)

[reproduced as written]

The Agents said:

Also, there was a volunteer meeting in one of the community centres that we have. He came there shouting and threatening; that may be in the evidence also. And then there was an altercation with the maintenance staff – shouting at them. We had a birthday party. He came up and we were breaking the balloons and he started shouting at the staff and making noise. We wrote about it in a brief letter on that, as well.

The Tenant said:

I'll start with her latest accusation about the birthday party. Primarily, the party was above my unit, with a lot of people, balloons - a whole party around 9 or 10 o'clock when I was starting to wind my day down. I went to have a look to see what the noise was. I actually talked to the person having the birthday - the person that works here - and I wished him a happy birthday. But I said it was quite loud, and that was the purpose of that disturbance. It was coming from above me, and that's all I can say.

I wasn't ranting loudly, as they're suggesting. I went up there and made an enquiry. There were balloons, and normally this would be in the office; it easily is normal noise, but this was hooting and howling – a normal party. I accepted it after. I was certainly polite. I wasn't yelling or screaming as they ... that's not true.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I find that the Tenant's behaviour described above has significantly interfered with or unreasonably disturbed another occupant and the Landlord of the residential property. I find that when the actions described above are combined overall, this leads me to find that the Landlord has satisfied their burden of proof on a balance of probabilities.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act,

I find that the Landlord is entitled to an Order of Possession. I, therefore, grant the Landlord an Order of Possession effective two days after service on the Tenant, given that the effective vacancy date has passed.

The Tenant's Application is dismissed without leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application to cancel the One Month Notice. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid and effective as of April 30, 2021.

I grant the Landlord an **Order of Possession effective two days after served** on the Tenant.

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: June 15, 2021

Residential Tenancy Branch