



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47.

The hearing on April 01, 2021 was adjourned to July 22, 2021 due to time constraints. The tenant, advocates DD (the advocate) and CW attended the April 01 hearing. The tenant, advocate DD and witness MS attended the July 22 hearing. The landlord was represented by managers OY (the landlord) and PL on April 01 and by managers ZN and AH on July 22, 2021.

At the outset of the hearings the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the causes to end the tenancy.

Both parties agreed the tenancy started on March 01, 2019. Monthly rent is \$1,487.70, due on the first day of the month. At the outset of the tenancy a security deposit of \$725.00 was collected and the landlord holds it in trust.

The tenancy agreement and addendum were submitted into evidence. It states:

16 REASONABLE RULES:

- a) The Tenant promises to comply with any rules concerning the Tenant's use, occupancy or maintenance of the Residential Premises or Building or use of services and facilities provided by the Landlord provided that the rules are in writing, are reasonable in all circumstances and the Tenant is given a copy of the rules at the time of entering into the Lease and is given a copy of any amendments. The Landlord and tenant promises to comply with the statutory conditions set out in schedule 'A';
- b) The Tenant acknowledges receipt of the Rules of the Building which are attached to and form part of this lease as Schedule "A" (Rules and Regulations);

c) The Tenant is responsible for ensuring that his family, visitors, guests, servants and agents will observe and comply with these Rules and Regulations when in the Building or the Residential Premises.

SCHEDULE A

[...]

6. CONDUCT: In order to promote the safety, welfare, enjoyment, and comfort of other occupants and tenants of the Residential Property and the landlord, **the tenant(s), occupant(s) or the tenant's guests must not disturb, harass, or annoy another occupant of the Residential Property, the landlord, or a neighbour. In addition, noise or behaviour, which in the reasonable opinion of the landlord may disturb the comfort of any occupant(s) of the Residential Property or other person, must not be made by the tenant(s), occupant(s) or he tenant's guests**, nor must any noise be repeated or persisted after a request to discontinue such noise or behaviour

has been made by the Landlord. The tenant(s), occupant(s) or the tenant's guests must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant(s) of the Residential Property or other person at any time and in particular between the hours of 10:00 p.m. and 9:00 a.m. **If any tenant(s), occupant(s) or tenant's guest cause another tenant to vacate their rental unit because of such noise or other disturbance, harassment, or annoyance or because of illegal activity by the tenant(s), occupant(s) or tenant's guest, the tenant(s) must indemnify and save harmless the landlord for all costs, losses, damages, or expenses caused thereby. The landlord may end the tenancy pursuant to the Act as a remedy.**

(emphasis added)

Both parties agreed the tenant received the Notice in person on December 30, 2020. The tenant affirmed when he received the Notice, he was rude and yelled at the landlord: "fuck you". The reason to end the tenancy is: the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The details of the Notice are:

May 2020 – Sept 2020: General aggressions + harassment verbally reported by cleaners, landscapers, office staff and pest control.

September 2nd 2020: warning letter issued regarding harassment.

September 3rd 2020: observed [tenant] follow and take photo of female pest control contractor.

November 24th, December 13th and December 17th, 2020: Neighbour in close proximity to [tenant] complained of harassment from [tenant] in the form of banging on neighbour's door, and shouting profanities. Neighbour is now afraid for the safety of his family and wishes to move out.

December 23rd: Complaint from landscaper stating obstruction of work and [tenant]'s behaviour making the female landscapers uncomfortable.

December 30th: Took photo of [landlord's contractor] in hallway without permission after explicitly told not to in letter.

The Notice is dated December 30, 2020 and the effective date is January 31, 2021. The tenant continues to occupy the rental unit. The tenant submitted this application on January 05, 2021.

The landlord affirmed access to the fitness center was restricted due to the pandemic on March 09, 2020 and the tenant accessed the fitness center on June 26, July 01, July

09 and September 04, 2020. The tenant stated the landlord authorized him to use the fitness center during the pandemic. The landlord testified he did not authorize the tenant to use the fitness center.

The landlord said the tenant harassed the female cleaning contractors in September 2020. The landlord submitted into evidence an email from the cleaning contractor dated September 14, 2020:

This tenant will come out and bother my workers or me. He does this by coming out on his balcony or sit on his grass in front of his balcony, so we can't work there. We have waited for him to go in and when he hears us he comes out and just stares. There are rocks and debris from the tree. We can not do line trimming or blowing there when he's outside. He knows this and we feel like he is doing this to prevent maintenance in front of his apartment. We tried talking to him and he was rude and didn't want to listen. We are a all girl crew, his behaviour is making my crew feel uncomfortable. Thank you for your time.

The tenant affirmed he is friendly with the cleaning contractors and he did not harass them. Later the tenant stated the cleaning contractors submitted a fake complaint against him in April 2020 because the landlord asked them to do so.

The landlord testified the tenant followed a pest control technician on September 03, 2020. The landlord submitted an email from the pest control technician dated September 14, 2020:

It came to our attention that on Thursday September 3, 2020 our technician, while onsite completing the regular pest management service, was followed and photographed by one of the residents at [tenant's address]. **Our technician was not aware of his presence and was not aware that she was being photographed and was also unaware that he was photographing her vehicle.**

[redacted] was informed by a member of the [landlord] staff that she was being followed and photographed by this individual who resides in unit [tenant's address]. We take the safety and well-being of our staff very seriously. While this individual has not done anything illegal at this point, we will not allow our staff to be stalked, followed or photographed.

Please note that effective immediately we will not be providing any pest management services in [tenant's address]. If this resident is seen following and/or photographing our technicians again, we will pursue further action and will not service this location without a [landlord] representative with our technician at all times.

(emphasis added)

The tenant said he started taking daily notes about the contractors hired by the landlord in May 2020 and he photographed the car used by the pest control technician for his notes. The tenant denied the pest control technician access to his rental unit in August 2020 because he did not receive a proper written notice 24 hours in advance of the required access.

The landlord served the tenant a warning letter in September 2020 stating that he could be served a one month notice to end tenancy for cause because of his behaviour regarding the contractors.

The tenant affirmed he did not receive a warning from the landlord about the September 03, 2020 incident. Later the tenant stated he may have received a warning letter about the September 03, 2020 incident.

The landlord testified the tenant submitted noise complaints regarding the tenant that lives in the unit above his unit (the upper tenant). The landlord submitted into evidence an email from the upper tenant received on November 24, 2020:

My family joined me 6th of this month and we were in quarantine until 20th Nov.

[the tenant] came to my unit last week around 8:00 PM and told me that he was hearing some noise from the floor. I said sorry and our family is behaving good and trying to adjust here.

Today also he came around 7:40 PM and banged on my door and shouted at me using f words after I opened the door. I said our kids are not making any noise and trying to adjust to a new place and it will take some time to settle in and asked him to speak with management if he is having any problem. I apologized if he faced any problem. And he also asked me how many people are staying in the unit, I don't know what is the authority he is having to enquire this kind of details.

[...]

It is not acceptable if he is coming directly to me again during night time and banging and shouting at us.

On December 13, 2020 the upper tenant wrote a letter to the landlord informing that the tenant continues to submit noise complaints against him. On December 16, 2020 the upper tenant reported to the landlord that the tenant banged on his door:

Sorry to bother you, today night again my below neighbour banged on the door at 8pm and left the unit. I didn't open the door. We will talk tomorrow and try to come up with possible options to move to a new unit.

On December 17, 2020 the upper tenant wrote:

I am not feeling secured and comfortable living in my unit because of my below neighbour [tenant].

Yesterday also (12/12/2020) he banged on my door (at 8:00 PM) like anything and shouted and left the unit, I think it was loud enough for everyone on the floor to hear it. I and my family were worried, so we did not open the door.[...]

After seeing a series of events in the last one month, we decided to move to a new ground floor unit [...]

The tenant said he knocked on the upper tenant's door, introduced himself and asked them to be quieter. The tenant affirmed that on another night in December 2020 he banged on the upper tenant's door after 11:00 PM and yelled at the upper tenant: "shut the fuck up".

The landlord stated the upper tenant moved out on January 15, 2021 because he was afraid of the tenant.

The tenant testified he called the police because of noise emanating from the upper tenant's unit on December 13, 14, 16 (at 7:50 PM), 20 and 21, 2020. However, the police only arrive around one hour after the calls and the noise had already ceased. The tenant submitted into evidence the police file report dated December 21, 2020:

[...]As well, [tenant] was warned that if he continued to call police regarding this issue, especially at times of the day that were not in breach of a bylaw, he could be fined by the City for taking up police resources. [tenant] was receptive to the warning and advised he will continue to speak to City Hall and the property manager regarding the noise issues.

The advocate said the tenant denies any wrongdoing, the tenant did not receive a warning from the landlord and the written evidence submitted by the landlord is not as relevant as the sworn testimony provided by the tenant.

Analysis

The tenant confirmed receipt of the Notice on December 30, 2020 and filed this application on January 05, 2021. I find that the tenant's application was submitted

before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Based on the detailed September 14, 2020 email sent by the pest control technician and the undisputed testimony, I find the tenant followed the pest control technician on September 03, 2020 and photographed the technician's vehicle.

I find the tenant's testimony about the warning letter was vague and contradictory. Based on the landlord's convincing testimony, I find the landlord served the tenant a warning letter in September 2020 stating that he could be served a one month notice to end tenancy for cause because of his behaviour regarding the landlord's contractors.

Based on the tenant's undisputed testimony, I find the tenant banged on the upper tenant's door after 11:00 PM in December 2020 and yelled at the upper tenant "shut the fuck up".

The sworn testimony offered by the tenant corroborates the documents submitted by the landlord.

I note the tenancy agreement signed by the tenant emphasizes the tenant "must not disturb, harass, or annoy another occupant of the Residential Property, the landlord, or a neighbour". Furthermore, the tenant was also aware that the landlord could end the tenancy pursuant to the Act if the tenant disturbs another tenant (Schedule A, clause 6).

Section 47(1) of the Act states:

(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,

I find the tenant's actions regarding the pest control technician on September 03, 2020 and the upper tenant in December 2020 significantly interfered with and unreasonably disturbed the landlord and another tenant. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1)(d)(i) of the Act. I dismiss the tenant's application without leave to reapply.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on January 31, 2021.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I dismiss the tenant's application to cancel the Notice without leave to reapply.

I grant an order of possession to the landlord effective two days after service of this order. 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: July 27, 2021

Residential Tenancy Branch