



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT
 OPC, MNDL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on February 22, 2021, the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause, issued on February 11, 2021 (the "Notice") as well as recovery of the filing fee. In the Landlords' Application for Dispute Resolution, filed on February 25, 2021, the Landlord requested an Order of Possession based on the Notice, monetary compensation from the Tenant, authority to retain her security deposit and to recover the filing fee.

Preliminary Matter--Tenant's Adjournment Requests

The hearing was originally scheduled for teleconference on May 31, 2021 and was adjourned to June 8, 2021 and then adjourned again to June 21, 2021. Both parties called into the three dates set for the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. This Final Decision must be read in conjunction with my Interim Decisions relating to those two prior hearings.

During the original hearing, the Tenant claimed she was too ill at that time to participate in the hearing and requested an adjournment. The Landlord did not oppose the Tenant's request and as such I adjourned the matter. During the May 31, 2021 hearing I directed the Tenant to ensure her attendance at the reconvened hearing by having an agent appear if she was unable to do so.

When the hearing reconvened on June 8, 2021, the Tenant again claimed she was too ill to participate in the hearing. She did not appoint an agent and attended on her own

behalf. Again, and although the Landlords wished to have the matter resolved expeditiously, they consented to the Tenant's request for a further adjournment.

Pursuant to my Interim Decision made June 16, 2021, I Ordered the Tenant to appoint an agent to appear in her place in the event she could not participate in the June 21, 2021 hearing.

When the hearing reconvened on June 21, 2021 the Tenant again requested an adjournment. She stated that she continued to be ill and was not able to participate in the hearing. She did not appoint an agent and argued that she was not required to do so, despite the fact I addressed that argument in my Interim Decision of June 16, 2021. When I informed the Tenant that I was denying her request for yet another adjournment, she stated that her dog was ill. She did not explain how this related to her adjournment request or the application before me.

The Landlords opposed the Tenant's request for a further adjournment on June 21, 2021.

When considering a request for an adjournment, Arbitrators are guided by Rule 1.1, 7.9 and 8.2 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objections set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

In the case before me the Tenant was served a 1 Month Notice to End Tenancy for Cause on February 14, 2021. At the time of the third hearing, four months had passed since the issuance of the Notice, and I had already granted the Tenant two adjournments. Further, the Tenant could have had an agent appear in her stead at any of the prior hearings and, despite my direction and then Order that she do so, refused to appoint an agent, such that any prejudice to her in proceeding was as a result of her refusal to appoint an agent. I also note that at all times during the June 21, 2021 hearing the Tenant was composed, coherent, and competently arguing her position; at no time during the June 21, 2021 hearing did I have any concern that the Tenant was not able to present her testimony and submissions or advocate on her own behalf.

As explained during the hearing, I found that a significant prejudice to the Landlords, in granting a further adjournment, and delaying the resolution of the 1 Month Notice. The Landlord's sought to end the tenancy for cause effective March 31, 2021 and to delay the matter more than three months after this effective date was simply not acceptable. As well and as noted later in this my Decision, the circumstances giving rise to the Notice continued until the time of the final hearing on June 21, 2021 such that it was imperative that the matter be resolved expeditiously.

Preliminary Matter—Prohibition Against Recordings

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

Preliminary Matter—Landlord's Application Materials

At the third hearing on June 21, 2021, the Tenant then stated that she was not served with the Landlord's Application for Dispute Resolution filed on February 25, 2021. This was the first time the Tenant raised this as an issue.

In response, the Landlord, S.W. stated that they served the Tenant by email.

At the time of service, email was not an acceptable means of service. As the Landlords failed to serve the Tenant in accordance with the *Act*, **I dismissed the Landlords' claim with leave to reapply.**

The Landlord, S.W., confirmed that he did not serve the Tenant with any evidence in support of their claim or in response to her claim by any other means other than email. As the Landlords failed to serve the Tenant with their evidence in accordance with the *Act*, I also declined to consider their documentary evidence.

No other issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

This tenancy began June 1, 2015. Monthly rent was \$1,175.00. The Tenant paid a security deposit of \$587.50 and a pet damage deposit in the amount of \$587.50.

The reasons cited on the Notice were that the Tenant, or a person permitted on the rental property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. In the details of cause section on the Notice the Landlords provided the following additional information.

Repeated noise disruptions starting in the very early morning hours including alarms and screaming voices. Building manager addressed disturbances several times in 2020 and January 2021. Alison contacted Lily Lee by phone on January 20/21 and advised her that a formal complaint had been issued by the buildings strata council-\$200 fine issued. Since then complaints from neighbouring tenants have continued and resulted in the Victoria Police being called to attend on February 10 & 11/21.

The Landlord, A.W. testified that they served the Tenant with Notice of the Application filed on February 25, 2021. The Landlord stated that he sent an email to the Tenant with Notice of the hearing.

The Landlord, A.W. testified that they received a warning from the strata due to excessive noise from the rental unit. She further stated that on January 12, 2021 they received minutes of a strata council meeting, which mentioned frequent noise issue with respect to the rental unit. The Landlord was also provided a recording of the noise which was the subject of the complaint. Once this information was provided to the Landlords, they sent the strata council minutes to the Tenant and her mom by email with a message about the complaint.

The Landlord stated that the nature of the complaint is that the Tenant is using a super sonic alarm to wake herself up or her mom at 4:00 a.m. The alarm does not always wake them up, which results in screaming and yelling. One occupant of the building has been woken up many mornings by both the sound of the alarm and the screaming which continues for hours. The Landlord noted that these sounds have been recorded by the other occupant as well.

The Landlord testified that the Tenant has acknowledged the noise by text message and has at times apologize for the sound. Despite her apologies, the sound continues, up to and including the alarm going off shortly before the third and final hearing.

The Landlord confirmed she had personally heard the recordings and stated that the sound is very loud and can be heard very clearly. The Landlord described it as piercing screaming which goes on for hours.

The occupant who complained of the noise, A.G., also testified. A.G. testified that he lives in the unit directly above the rental unit and has lived in the unit for 2 years.

A.G. stated that complaints relate to shouting and a domestic disturbance, banging of furniture and walls between the hours of 5:00 a.m. and 8:00 a.m. He stated that it is inconsistent in that sometimes it is on a daily basis for weeks at a time, and sometimes there is only one or two per week or month.

A.G. stated that the Tenant also has a very loud alarm clock, which she described to him as a “super sonic alarm clock” and which goes off for ½ hour from 2:00 to 4:00 a.m. When the Tenant and her mother do not wake, the shouting and “ruckus” begin. He stated that he spoke to the Tenant about the alarm and she says it is “super sonic” because they have trouble waking up.

A.G. further testified that he can clearly hear the Tenant and her mother arguing and that sometimes they are arguing about “general things”, and sometimes it is the Tenant’s mother yelling about the Tenant’s career choice. He also confirmed that he has personally recorded hours of recordings and has provided the recordings to the Landlord, the Tenant, the strata, and the police. He confirmed that he first called the police about the ongoing disturbance in February of 2021. He also stated that there is an open police file and they recommended they go through the strata and then the RTB.

A.G. stated that the Tenant has explained to him about the alarm situation as she has “sleeping issues” and she has apparently looked into other alternatives, such as a tactile response such a vibrating watch to wake her up.

A.G. stated that to his knowledge the Tenant’s mother lives with the Tenant or is there frequently. He also stated that he sees them regularly and he has also talked to them in the elevator.

In terms of the last time he heard the yelling was the morning of the hearing on June 21, 2021. He confirmed that the last time he heard the alarm was on Saturday June 19, 2021.

In terms of the impact on him, A.G. stated that it has been significant. He stated that although it is irregular, there have been times when it goes on for weeks at a time. He noted that at one point he went two weeks without a full nights sleep. He started to wear earplugs but then he started missing his own alarm. He also states that he would be unsafe to wear earplugs every night as it impacts his ability to hear the alarm.

In response to the Landlord’s testimony and submissions the Tenant testified as follows.

The Tenant stated that she has a regular alarm clock, not a “super sonic one” and it “isn’t loud at all”. She claimed that the alarm goes off at 4:00 a.m. and 4:30 a.m. not 2:00 a.m. as the Landlord and the witness stated.

The Tenant also testified that she does not know the Landlord's witness. She claimed that A.G. has never spoken to her at any time, she has never spoke to him, and never had a text conversation with him at any time. The Tenant also claimed that she has no idea what he looks like at all. She claimed that his testimony was entirely false and made up.

The Tenant also claimed that she has also never had a conversation with anyone about a tactile alarm, although she did have a conversation with the police officer who "came to visit." She stated that the police officer attended her rental unit as they said that someone called about the alarm. Apparently, the police officer told her to turn down the alarm but said it wasn't a big deal.

In terms of the allegation that the Tenant's mother is yelling and screaming, the Tenant testified that her mother never yells at her and they only have regular conversations. She confirmed that she is the only person who lives at the unit, and her mother does not live there.

The Tenant denied receiving any complaints from anyone on her floor. She also denied receiving any complaints from the Landlord, save and except for the 1 Month Notice to End Tenancy, which she found surprising. She also stated that she never received any communication from the building manager, G.D. regarding complaints. The Tenant stated that she is not sure why they issued the Notice at all, as she has been a very good tenant for five years and has paid all the rent.

Near the conclusion of her testimony and submissions the Tenant expressed concerns with the recordings, and submitted that it is not legal to record another person, which she believes that it is an invasion of her privacy.

The Tenant finished her testimony by saying that it was in fact, A.G. who was disturbing her as he was banging on the walls to such an extent that she is afraid for her life. She also claimed that she called the police the day before the hearing about him. The Tenant confirmed she did not bring her concerns about A.G. to the Landlord's attention or the strata.

Analysis

A Landlord may end a tenancy provided they do so in accordance with the *Residential Tenancy Act*. Section 47 of the *Act* allows a Landlord to end a tenancy for cause and reads as follows:

Landlord's notice: cause

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

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (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;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i)has caused or is likely to cause damage to the landlord's property,
 - (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, or
 - (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;
- (h)the tenant
 - (i)has failed to comply with a material term, and
 - (ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(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.

In this case the Landlords sought to end the tenancy pursuant to section 47(1)(d) alleging that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

In this case I find the Landlords have met the burden of proving the reasons for ending this tenancy for the following reasons.

I accept the Landlord, A.W.'s testimony that they have received numerous complaints from the strata about the noise coming from the rental unit. Based on the Landlord's

testimony as well as the testimony of the witness, A.G., I find that the nature of those complaints relate to the Tenant's loud alarm going off in the early morning hours following which the Tenant, and her mother, engage in yelling and screaming at each other.

I also accept the Landlord's testimony that she has personally listened to recordings of the noise which she described as piercing screaming. While I did not have the benefit of listening to these recordings, as I excluded the Landlord's evidence from consideration, I note that the witness, A.G., described the noise in a similar fashion, and testified that he personally recorded hours of the noise, and provided it to the Landlord, the strata and the police. The Landlord and the witness were also consistent in terms of their description of the noise including a loud alarm and screaming.

Where the testimony of the Landlord and the Landlord's witness conflict with the Tenant's I prefer the former. The Landlord was straightforward in her testimony and I found her to be compelling and believable. I also found the witness to be credible and consistent in his testimony. It is clear that the noise from the Tenant and her mother has had a significant negative effect on his enjoyment of his residence and that he has tried to work with the Tenant to find solutions to the problem.

The Tenant denied all allegations made by the Landlord and stated that she has never spoke to the witness, nor does she even know who he is. I do not accept her testimony in this regard. The witness provided clear testimony as to conversations he has had with the Tenant, her description of her "super sonic" alarm and sleep issues, as well as discussions they have had with respect to other non-audible alarms. The witness also provided testimony as to the content of the disagreements between the Tenant and her mother, including arguments regarding the Tenant's career. I am not persuaded that he made these stories up, nor do I accept the Tenant's assertion that it is the witness who is disturbing her. Even her description of him banging on the walls arguably supports a finding that it is the Tenant who is making noise, as to respond by banging on the walls seems to be a common event in multi unit dwellings.

Similarly, the Tenant denied making any noise, yet submitted that the recordings of her were a breach of her privacy; this statement suggests the Tenant acknowledges that the recordings were in fact of noise from her rental unit.

The Tenant described the police as coming by for a "visit". She also stated that the office spoke to her about her alarm and gave her suggestions as to how to minimize the noise disturbance. I find the police attendance and the Tenant's testimony in this

regard, to corroborate the Landlord's testimony and submissions that the Tenant is unreasonably disturbing others.

I also accept the Landlord's testimony as well as that of the witness that the Tenant's noise disturbance continued until the day of the third hearing on June 21, 2021. Not only does the Tenant not seem to have any awareness of the impact of her behaviour on others, but even in the face of these proceedings does not seem to take any corrective measures.

For these reasons I find the Notice should be upheld. Consequently, I dismiss the Tenant's request for an Order cancelling the Notice. The tenancy shall end in accordance with the Notice.

Section 55 of the *Residential Tenancy Act* provides as follows:

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 and confirm it complies with section 52 of the *Act*. As I have dismissed the Tenant's Application, I grant the Landlord an Order of Possession effective **two days** after service upon the Tenant. This Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

Having been unsuccessful in her Application I dismiss the Tenant's request for recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlords' Application is dismissed with leave to reapply.

The Tenant's request for an Order canceling the Notice and recovery of the filing fee is dismissed.

The Landlord is granted an Order of Possession pursuant to section 55 of the *Act*.

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 16, 2021

Residential Tenancy Branch