



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Burnaby Mountainview Apartment and
[tenant name suppressed to protect privacy]

DECISION CNC, RP, FFT

Dispute Codes

Introduction

This hearing was scheduled to convene at 9:30 a.m. this date by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord make repairs to the rental unit or property, and to recover the filing fee from the landlord for the cost of the application.

The landlord was represented at the hearing by an agent. The line remained open while the telephone system was monitored prior to hearing any testimony, and the tenant attended at 9:38 a.m. and advised that he had some difficulty joining the call. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that he took over the building as property manager in 2017 and the tenant was residing in the rental unit at that time, and still resides in the rental unit. A portion of a tenancy agreement has

been provided for this hearing but does not name the tenant; the tenancy commenced July 10, 2005 and the tenant was a roommate of previous tenants. Rent in the amount of \$880.00 was originally payable on the 1st day of each month, which has been increased over the years and is now \$1,124.00 per month in addition to \$30.00 per month for parking, and there are no rental arrears. The landlord currently holds a security deposit in the amount of \$440.00, and no pet damage deposit was paid. The rental unit is an apartment in a complex containing 3 floors and 12 units; 4 units on each floor.

The landlord further testified that on May 22, 2021 the tenant was served with a One month Notice to End Tenancy for Cause in person by another property manager. A copy of the Notice has been provided for this hearing and it is dated May 22, 2021 and contains an effective date of vacancy of June 30, 2021. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect 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 tenant has been late with rent on 5 occasions: February 6, 2019; February 2, 2020; April 2, 2020; July 7, 2021 and August 5, 2021.

The landlord has provided a number of messages received complaining of noise from the rental unit, smoking cigarettes and marihuana; it is a non-smoking building. Notices had been given since marihuana became legal. One of the residents who has complained lived above the rental unit and that resident moved out last year. The first of his complaints is a string of text messages dated February 8, 2020 at 11:19 p.m. stating that quiet time is 11:00 p.m. on weekends. The message above that is not dated, but states that the writer doesn't believe the tenant is at home. The next complaint at the bottom of the string is dated February 22, 2020 stating that hallways and the resident's suite smell of marihuana and the resident has to leave his apartment.

The next is a complaint of music, loud shouting since 7:00 p.m. and is dated March 21, 2020 at 8:11 p.m. and the writer questions that the tenant has guests "in a time like this," and "last night, too." The landlord responded that he spoke with the tenant; and

the resident indicates that he suspects the tenant smokes marijuana in the bathroom which comes in through the vents.

Another string of text messages by the same resident complaining of the tenant are dated March 28, 2020, April 17, 2020 and another on April 18, 2020 stating that at 1 a.m. the tenant in the rental unit quieted down.

The landlord texted the tenant on March 28, 2020 stating that it is 12:30 a.m. and quiet time, to which the tenant responded that he isn't home and no one is there.

Text messages from another resident have also been provided for this hearing and the first is dated September 20 at 12:02 a.m. complaining that "the guys below me are being way too loud. They're yelling and laughing and their base music is shaking my floor. Even with all my windows closed I can still hear them."

The second is dated December 12 at 2:35 a.m., complaining of a party upstairs, but then states maybe it's actually downstairs and then confirms that it is downstairs.

The third is dated May 22 at 1:40 a.m. stating that the downstairs party is too loud, that the writer asked them to keep it down and they apologized, but the base is still loud. The next in the string states, "You must have come because they are completely quiet now."

Each time the landlord or agents receive a complaint, they investigate. During the last 4 years of managing, the landlord cannot count the number of times that he has spoken to the tenant about respecting neighbours and partying. One of the residents who has complained resides across from this tenant, not above or below.

The illegal activity is listed in the Notice to end the tenancy due to the tenant breaking COVID restrictions for gatherings. On May 22, 2021 the landlord had to break up a big party at 1:40 a.m. which lasted until about 3:00 a.m. There were quite a number of people there and some guests were trying to intimidate the landlord.

The landlord has provided copies of letters to the tenant dated December 22, 2019 and September 20, 2020. They both warn the tenant about noise complaints.

The landlord also testified that whenever there is a turnover of residents, the landlord inspects and sometimes renovates apartments. On several occasions the tenant saw that and damaged his unit. The landlord told the tenant that the landlord will not update for appearance only; there has to be a reason for a need to do so. The landlord repaired a hole in the drywall at the end of August, 2021, however the tenant claims that

cracks in the drywall allow noise to filter through to other apartments, but his requests to repair that have been denied after inspection.

The tenant testified that he was not at home on March 28, 2020, and the tenant told the landlord that. One of the complaints provided by the landlord is at 8:00 p.m. which is not against any rules. The tenant had 2 roommates and their girlfriends were all visiting however they are all in the tenant's "bubble." The tenant doesn't smoke, but his roommate did, but smoked outside. The unit beside this rental unit, and others smoke weed and cigarettes, so the tenant questions how the landlord can pinpoint where it comes from and does not believe any smell should go through the vents. The smell that the resident complained of came from the neighbour next to the tenant. The building manager said that he was tired of the complaints from one resident and due to the false allegations, he asked the tenant to write a letter about how the other resident was behaving.

The complaints from the other resident are also disputed by the tenant; it was the May long weekend and the tenant stayed home due to COVID and had a game night, not a party. The tenant tried to explain that to the landlord, however the tenant and guests had an argument about a guest wanting to drive home drunk, which the tenant could not allow. There was no party and no one was loud. The tenant believes that if other residents can hear it, it is due to the cracks in the drywall. They are still there, and in the ceiling as well. The tenant also testified that he woke up to some else's alarm.

With respect to late payment of rent, the tenant apologized and the previous managers allowed rent to be paid within the first week of each month. The tenant and roommates each paid a portion of the rent and the tenant would wait for the roommates to pay and then pay all of the rent. However, the new manager wouldn't accept that. The tenant was never more than 5 days late, and paid the late fee. July and August were long weekends. The tenant lives in the rental unit alone now, and doesn't have any roommates since April, 2021.

SUBMISSIONS OF THE LANDLORD:

The landlord deals with each case individually, and it's not like, "They're doing it too." The disturbances are a stress to management and other occupants. The landlord has been managing the rental complex for 4 years and by now would have expected changes about late rent. There was never a discussion about having a few extra days to pay rent. With respect to noise and marihuana, the landlord made it clear where the landlord's agents stand on that and it should not be a surprise.

The landlord also advised that the first resident who complained about noise was an older, sensitive man with medical issues and he and the tenant disagreed on life style. The other resident would complain even when it was not late, and the landlord told the tenant that if it's a problem, a letter would be helpful. That resident moved out voluntarily.

SUBMISSIONS OF THE TENANT:

The tenant has never missed rent, but if the 1st of the month falls on a Saturday, the tenant pays as soon as he can. The tenant has not done anything illegal and does not smoke in the rental unit. Another resident did, and the tenant complained to management, and the tenant believes that was the same complaint that the other resident had.

The tenant also submits that he sees a pattern when people move out, and it's unfair to go after the tenant with complaints so the landlord can renovate after the tenant moves out and charge more rent, which makes good business sense.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to repeated late rent, a tenant must pay rent when it is due. Three late payments are the minimum to justify ending a tenancy. I also refer to Residential Tenancy Policy Guideline #38 – Repeated Late Payment of Rent, which states, in part: “It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.”

In this case, the landlord testified that the tenant was late with the rent once in 2019, in February and April, 2020, and twice in 2021, one of which was after the Notice was issued. Given that this is September, 2021 and the Notice was issued on May 22, 2021, I find that the landlord has only established 2 late payments more than a year before the Notice was issued, and only 1 this year prior to issuing the Notice. Since the

last late payment in 2020 was in April, I find that the tenant cannot be said to be repeatedly late.

With respect to noise complaints, I have reviewed all of the messages provided by both parties, and almost all of them are dated 2020, and some don't contain a year, but given that one is December and one is September 20, that cannot be this year because the date of this hearing is September 16, 2021. Also, the breach letters provided by the landlord are dated 2019 and 2020. There is no evidence or testimony that any disturbances have occurred within the last year.

With respect to illegal activity, breaking COVID restrictions can qualify, however, the tenant testified that it was not a big party on May 22, 2021, but during a long weekend and the only noise that occurred was arguing with a guest about driving home drunk. The tenant also testified that the guests were all in his "bubble." I see no dispute to that from the landlord, and I am not satisfied that the landlord has established illegal activity.

Ending a tenancy is a serious matter, and the landlord must act in good faith. In the circumstances, I am not satisfied that the landlord has established any of the reasons for issuing the Notice, and I cancel it.

The tenant also claims repairs, and I entertained the application even though the Rules of Procedure specify that multiple applications contained in a single application must be related, because the tenant submitted at the commencement of the hearing that the claims are related.

A landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. I am not satisfied that the cracks in the drywall cause noise to travel. Further, I find that the tenant has failed to establish that the drywall needs replacing or that the landlord has failed to comply with the *Act*. I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application, the tenant is entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount, and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it by filing the order in the Provincial Court of British Columbia, Small Claims division for enforcement as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated May 22, 2021 is hereby cancelled and the tenancy continues.

The tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 16, 2021

Residential Tenancy Branch