



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

On May 26, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One Month Notice to End Tenancy for Cause, to request monetary compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matter - Evidence

Both parties agreed that Tenant’s documentary evidence was exchanged amongst parties, pursuant to the Act.

The Tenant testified that he did not receive the Landlord’s evidence package. The Landlord submitted a registered mail receipt, a tracking number, and testified that the evidence package was sent to the Tenant via registered mail on September 1, 2021. The evidence package was returned by Canada Post as unclaimed.

Residential Tenancy Policy Guideline – 12. Service Provisions states where a document is served by Registered Mail, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

In this case, I find that the Landlord served the Tenant their evidence package, pursuant to Section 88 of the Act. I find the Tenant refused to pick up the Landlord’s evidence via Canada Post and as a result, I deem the Tenant served on September 6, 2021. As a result, I find that the Landlord’s evidence is admissible.

Preliminary Matter – Unrelated issue

I determined that the issue related to a monetary claim was not related to the main issue in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated May 17, 2021, (the "One Month Notice") be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on September 1, 2020 and continued as a month-to-month tenancy. The rent is \$1,175.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$587.50 and a pet damage deposit in the amount of \$587.50.

The Landlord provided undisputed testimony that they served the One Month Notice to the Tenant by attaching it to their door, on May 17, 2021. The move-out date on the One Month Notice was effective on June 30, 2021. The Landlord testified that the One Month Notice was issued as the Tenant and his guests had significantly interfered and unreasonably disturbed other occupants in the residential property and breached a material term.

The Landlord submitted evidentiary documentation to support their testimony that they had received 15 emails that complained of the excessive noise coming from the Tenant's rental unit between March 17, 2021 and September 16, 2021. The Landlord stated that these complaints had been received from the occupant that lived below the Tenant.

The Landlord submitted three warning letters that were sent to the Tenant warning him of the noise and that a continuation of such ongoing disturbances could result in a One Month Notice to end tenancy.

The Landlord stated that the noise complaints continued and that the Tenant and his guests have been continuing to cause disturbances, with the latest complaint as of September 16, 2021.

The Landlord is requesting an Order of Possession as the Tenant is still living in the rental unit and causing a disturbance to other occupants of the residential building.

The Tenant testified that he works Monday to Friday and that it's not him making the noise late at night and into the early morning. The Tenant stated that a lot of the complaints are during the week and that he has to get up early on the weekdays and would not be causing noise into the early hours of the morning.

Analysis

The Landlord has served the One Month Notice on the Tenant based on sections 47(1)(d) and 47(h) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions significantly interfered with or unreasonably disturbed another occupant. Furthermore, in relation to section 47(h), that the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the Landlord gives written notice to do so. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the One Month Notice are valid and that the One Month Notice complies with section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with section 55 of the Act.

The Landlord has submitted copies of emailed complaints that document the dates the Tenant unreasonably disturbed another occupant of the residential property. The Landlord has also provided testimony and submitted copies of the warning letters sent to the Tenant to caution the Tenant of the consequences of continuing to interfere with the occupant's quiet enjoyment. Specifically, the warning letters document that the Landlord has received complaints of excessive noise consisting of the Tenant and their guests "being extremely loud, playing video games, banging, thumping, past 2 a.m., causing a disturbance to others in the building."

I find that the Tenant provided little testimony or evidence to dispute the Landlord's position. When I review the email complaints, I find that the Tenant's claim that most of the complaints were mid-week is incorrect, rather, I find that most of the complaints are about noise during the weekend (Friday through Sunday) and, as admitted by the Tenant, he was not working on the weekends.

Upon review of both parties' testimony and evidence, and based on a balance of probabilities, I find that the Tenant and his guests have significantly interfered with and unreasonably disturbed another occupant of the residential property, contrary to section

47(1)(d) of the Act. As such, I find that at least one of the reasons set out in the One Month Notice are valid.

As one of the reasons in the One Month Notice are valid, I dismiss the Tenant's application to cancel the One Month Notice without leave to reapply.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the One Month Notice, issued by the Landlord on May 17, 2021, complies with the requirements set out in Section 52.

I have dismissed the Tenant's Application and found that the One Month Notice is compliant with the Act and at least one of the reasons set out in the One Month Notice are valid. For these reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution to cancel the One Month Notice.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

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 29, 2021

Residential Tenancy Branch