



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Okanagan Métis & Aboriginal Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord Agent, SW, and the Tenant attended the hearing at the appointed date and time, and both parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenant served the Landlord with the Notice of Dispute Resolution Proceeding and all evidence on July 9, 2021 by registered mail (the "Notice"). The Tenant referred me to the Canada Post registered mail receipt with tracking number as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. SW confirmed receipt of the Notice on July 15, 2021. I find that the Landlord was duly served with the Notice for this hearing in accordance with Section 89(1)(c) of the Act.

The Tenant did not raise any issues with respect to service of the Landlord's evidence package.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to a recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed this periodic tenancy began on January 22, 2021. Monthly rent is \$950.00 payable on the first day of each month. A security deposit of \$475.00, and a pet damage deposit of \$475.00 were collected at the start of the tenancy and are still held by the Landlord.

SW served the One Month Notice on the Tenant on June 2, 2021 by leaving a copy in the Tenant's mailbox. SW said this was the second One Month Notice, as it seemed the Tenant had not properly received the first notice. The Tenant confirmed receipt of the One Month Notice after being asked by SW if he had received the package. He said he checked his mailbox around 6 or 7 PM on June 2, 2021 and found the One Month Notice. The Tenant applied for dispute resolution.

SW said they received complaints of loud music, banging and domestic violence coming from the Tenant's rental unit. SW issued five breach letters to the Tenant for most of those reports, but SW testified that the Tenant is not correcting the situation. SW also stated they cannot tolerate offensive behaviour from the Tenant in their office.

The breach letters sent to the Tenant and submitted into documentary evidence set out complaints as follows:

- May 4, 2021 – noise complaint
- May 17, 2021 – noise complaint
- May 17, 2021 – domestic dispute, disturbing neighbour's quiet enjoyment
- June 2, 2021 – refrain from knocking on walls/ceiling
- June 3, 2021 – unbecoming conduct towards maintenance man

The Tenant said he takes full responsibility of the first noise complaint, but objects to the remainder. He testified that he does not play loud music past 9 PM, the latest 11 PM, as that is when he goes to bed. He maintained the tenants above him stomp around their rental unit and disturb his quiet enjoyment in his suite. He went to SW's office and complained, and he was told to go and talk to the upstairs tenants. He did that and was met with drunk and loud tenants. Talking to them did not work. He resorted to two bangs on his ceiling with a broom to alert the people upstairs that they are being too noisy. The Tenant repeated he complained about noise, and the office staff did not do anything about it. The upstairs tenant complained about noise the Tenant was making, and he received breach notices.

The Tenant described the event which SW said was a domestic violence event. The Tenant and a friend were at the beach and his friend met a woman there. They were drinking and they all returned to the Tenant's suite. After a couple hours, the Tenant said he kicked the woman out of his suite as he discovered that items were missing from his belongings. He called the police, and she was screaming outside of his suite around 8:30/9:00 AM. Since this time, he has not had anyone else in his suite.

The Tenant said he did speak to the maintenance man about SW, and the discrepancies he claimed she made with regard to when the One Month Notice was delivered. The unsigned documentary evidence from the maintenance man outlines that he did not feel it was true that SW was changing her story. In the maintenance man's letter, he alluded that the Tenant threatened him. The Tenant denied that he threatened the maintenance man.

SW specifically referred me to her Exhibit #13, an unsigned letter by another office staff employee. This letter relays the events the office staff employee heard and observed of the Tenant on June 2 and 3, 2021. The letter contents were submitted to confirm the SW's testimony about the Tenant's agitated demeanor after receiving the One Month Notice, his inappropriate grabbing of himself, yelling and using vulgar language. The Tenant denied that he inappropriately grabbed himself in front of SW or the office staff employee, and he denied swearing at them.

The Tenant testified that he has made his own complaints about noise in the building affecting his quiet enjoyment. He submitted that he has made two verbal complaints, and four email complaints. SW testified that after his first verbal complaint, she heard nothing else about the noise. The Tenant submitted he feels he is being pegged out to be the culprit. He made a proposal that they sit down and talk about the upstairs tenant

and the noise that comes from their rental unit. He does not want to continue to fight, he loves living in the rental unit, as it is good accommodation for him and his cat, and he wants to stay.

SW testified that complaints are still coming in about the Tenant.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47(1)(h) of the Act sets out how a tenancy may end for cause. A landlord may end a tenancy by giving notice 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 notice must comply with Section 52, form and content of the notice, and a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

SW served the Tenant with the One Month Notice on June 2, 2021, listing the cause as a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I find the One Month Notice was duly served according to Section 88(f) of the Act, and it complied with form and content specified in Section 52 of the Act. The Tenant filed an application for dispute resolution on June 12, 2021. I find the Tenant's application was made within the applicable time limit.

After a verbal complaint, he was told to talk to the offending tenants himself. He did this, but to no avail. In regard to the domestic dispute complaint, the woman was not his partner, and he was the one who called the police about her disturbance. I find that the Tenant provided credible evidence in regard to these events.

SW did not provide the police reports into evidence that are listed in one of the anonymized emails submitted into her documentary evidence. SW referred to the

Tenant's agitated demeanor but in the prospect of losing housing, I find that the Tenant exhibiting agitation is warranted. In fact, seven of the eight emails in SW's documentary evidence were anonymized which I find lends them less weight as credible evidence. SW did not produce any witnesses which may have strengthened that evidence. I find that the evidence presented in this hearing fails to establish that the Tenant has breached a material term of his tenancy. While I accept that the Landlord and the Tenant have differing views on the noise complaints, I find, on a balance of probabilities, that there is insufficient evidence for me to find sufficient cause to end the tenancy.

As I do not find cause to end this tenancy, SW's One Month Notice is cancelled, and the tenancy shall continue until it is ended in accordance with the Act. As the Tenant is successful in his application, he is granted recovery of the application filing fee. Pursuant to Section 72 of the Act, the Tenant may withhold \$100.00 from one rent payment due to the Landlord.

Conclusion

The Tenant's application to cancel the One Month Notice is granted, and the Tenant may withhold \$100.00 from one rent payment to the Landlord to cover the application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 19, 2021

Residential Tenancy Branch