



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAKER CREEK HOLDINGS and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR

Introduction

On June 1, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking a rent reduction pursuant to Section 65 of the *Act*.

The Tenant attended the hearing and L.C. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served the Notice of Hearing package by hand on or around June 16, 2021 and L.C. confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served the Notice of Hearing package.

The Tenant advised that he did not serve his evidence to the Landlord. As this evidence was not served to the Landlord in accordance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

L.C. advised that there was no documentary evidence submitted for consideration on this file.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice, and the other claim was dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2020, that rent was \$725.00 per month, and that it was due on the first day of each month. They also agreed that a security deposit of \$362.50 was also paid; however, the Tenant claims that a pet damage deposit of \$362.50 was paid as well. A copy of the signed tenancy agreement was not submitted as documentary evidence.

L.C. advised that the One Month Notice to End Tenancy for Cause was served to the Tenant by posting it to his door on May 31, 2021. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." The Notice indicated that the effective end date of the tenancy was June 30, 2020.

L.C. advised that the Notice was served because the Tenant would not keep his cats on a leash pursuant to the term in the tenancy agreement indicating that all pets must be kept leashed. She believes a warning letter regarding this was given to the Tenant; however, she is not sure when, but it was within the last year.

She then advised that there was an incident in the laundry room in or around September 2020 where the Tenant became upset because the machines were pre-pay only and he did not have the money in advance. She stated that “no” is a trigger word for him and when he was told that he could not do laundry and pay later, he became verbally abusive and started hitting himself. During his outburst, he hurled obscenities at the building manager.

She then submitted that a young lady, that lived in the building, complained approximately two months ago about his conduct towards her. She stated that the Tenant’s door was open, and he asked the resident as she was passing by if she would like to feed him, which made her feel uncomfortable. The resident also complained as the Tenant asked her to change him as well. She was so uneasy with the Tenant’s ongoing conduct that she moved out at the end of August 2021.

Finally, she advised that the Landlord has received multiple complaints of the Tenant’s loud and inappropriate music at all hours of the day, and this happens at least once a week. She stated that in addition to complaints from residents of the building, the Landlord also received complaints from the mall across the street. She stated that the last incident was approximately a week ago and she believes the Tenant was served a written warning letter about his music, as well as verbal warnings.

The Tenant advised that he never received any warnings letters regarding any of L.C.’s submissions and that he did not receive a verbal warning regarding the cats. Regarding the laundry incident, he did not dispute that this occurred as his outbursts “happen all the time” on account of a brain injury he suffered in the past. He stated that he retaliates based on what people say or do to him.

With respect to the incident with the young lady, he confirmed that he talked to her, but he cannot remember things that he has said or done due to his brain injury.

Regarding the issue of the loud music, he stated that he has received no warning letters or verbal warnings about his music. However, he then contradictorily stated that he

does “crank” his music, but it is “not as loud as people claim.” He also acknowledged that he was aware of a complaint from the mall. He then contradicted his earlier testimony by stating that he “does not crank music.”

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord’s One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. I note that the effective end date of the tenancy was noted as June 30, 2020; however, as this was more likely than not a typographical error, I find it reasonable to amend this Notice pursuant to Section 68 of the *Act* to correct the effective end date on the Notice to June 30, 2021.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part 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:

(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 have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. When assessing the totality of the evidence before me, I find that the Tenant did not dispute having inappropriate outbursts, that these outbursts "happen all the time", and that he reacts by retaliating when he believes someone has said or done something that he takes objection to. I do not find that this type of behaviour as described by the L.C. would be considered acceptable.

I also find it important to note that the Tenant initially denied being aware of any complaints of his loud music. However, in addition to acknowledging that the "cranks" his music, he stated that it is "not as loud as people claim." In my view, this last statement appears to be confirmation that he actually had knowledge of complaints about his music, which is inconsistent with his original testimony. As such, I find it more likely than not that the Tenant plays his music at an unreasonable level, and that he continues to do so despite receiving warnings about this on more than one occasion.

Based on the above, I prefer the Landlord's evidence as it is more consistent, logical, and likely, when weighed on a balance of probabilities, and especially when weighed against the Tenant's inconsistent and varying testimony. In my view, it appears as if the Tenant's actions were unquestionably intentional, unnecessary, and a deliberate attempt to disturb staff or other residents of the building. I find that the Tenant likely attempted to fabricate his portrayal of the complaints by the Landlord, but then unintentionally contradicted his own testimony. As I am satisfied that the Tenant's inappropriate and malicious actions are consistent with the Landlord's evidence, I find that I prefer the Landlord's evidence on the whole.

As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The amended effective end date of the tenancy of June 30, 2021 on the One Month Notice to End Tenancy for Cause is changed to the nearest date that complies with the law. Since that effective date has passed, I grant the Landlord an Order of Possession effective **two days** after service of this Order on the Tenant.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order 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: October 3, 2021

Residential Tenancy Branch