



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCL RENTAL AND STORAGE
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

DK ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenant confirmed receipt of the 1 Month Notice dated June 29, 2021. In accordance with section 88 of the *Act*, I find the tenant duly served with the 1 Moth Notice.

Preliminary Issue: Landlord's Service of Late Evidence

The tenant testified that the landlord had served the tenant with their evidentiary materials just a few days before the hearing, but confirmed that they did have the opportunity to review these materials.

Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. In this case I am satisfied that the tenant had an opportunity to

review the landlord's evidentiary materials. Accordingly, I allow the landlord's late evidence to be admitted for the purposes of this hearing.

The tenants confirmed receipt of the 1 Month Notice dated April 12, 2021. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the Act.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2019, with monthly rent currently set at \$475.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$237.50, which the landlord still holds.

On June 29, 2021, the tenant was served with a 1 Month Notice to End Tenancy for the following reasons:

1. 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 landlord provided the following reasons for why they are seeking an end of this tenancy. The landlord testified that the tenant has demonstrated a pattern of behaviour where the tenant continues to harass and intimidate other tenants in the building. The landlord testified that the behaviour dates back to at least 2020, and provided a handwritten note written by the tenant, dated "4 AM, Sat. June 4, 2020, which was addressed to a neighbour after the tenant did not answer the door. The note stated "*I wish you would answer the door. Anyway, I understand your baby was crying at 3 AM, but the laughing and talking I'm still hearing now at 4 AM is a problem, for me anyway. Please remember that TV or talking late is audible to me, your neighbour.*"

Prior to this incident, the landlord had provided the tenant with a written warning dated March 17, 2020 about complaints received by other tenants which involve the tenant knocking on doors in an aggressive manner and trying to verbally engage other tenants about noise from their units.

The landlord wrote in the letter that “for future reference, if noise issues become unreasonable, inform me in writing that your right to quiet enjoyment has been breached, or violated and I will address the matter. Please DO NOT confront other tenants in the building and respect your neighbours’ right to quiet enjoyment.”. The landlord ended the letter with “consider this is your first warning. Any further violations may result in the termination of your tenancy”.

The landlord testified that the tenant continued to harass other tenants, including the commercial tenants downstairs, despite receiving this letter. The landlord testified that they had lost one of their commercial tenants after an incident that took place on involving the tenant and the commercial tenant over the use of a generator. The landlord included a copy of the correspondence from the commercial tenant dated June 29, 2021 which stated “unfortunately another event occurred today in which I must offer an end of tenancy notice... We have a generator...A lady at 0730 hours today came in demanding it be turned off as she can smell the fumes”.

The landlord chose to serve the tenant with the 1 Month Notice that date as a few days prior, on June 26, 2021, the tenant had approached another commercial tenant for moving objects and causing noise at 11:00 p.m. at night.

The landlord testified that the tenant was extremely confrontational, and has demonstrated a history of trying to resolve matters by bullying and intimidating other tenants. The landlord testified that the impact of the tenant’s behaviour is significant considering that the building is located in a small community with very few local businesses, and the loss of one commercial tenant would result in significant losses to the landlord, as it has in this case. The landlord testified that after each incident they would investigate the matter by speaking to the tenant in question, and the landlord had determined that there was no breach of quiet enjoyment as alleged by the tenant. Even in the case of an alleged breach, the tenant had taken it upon herself to approach and harass the other tenants despite being warned not to do so.

The tenant does not dispute approaching these other parties, but testified that the landlord had not only ignored her concerns and complaints, which the tenant feels were valid, the landlord had retaliated against the tenant with threats to terminate the tenancy for doing so. The tenant testified that the landlord had failed in their obligations to address the tenant’s concerns, and alleges that the landlord had even approached the tenant in an unprofessional and harassing manner.

The tenant provided letters in support of the tenant, and disputes that tenants have left because of the tenant's behaviour. The tenant testified that she had written the landlord on multiple occasions, and received no response. The tenant also submitted an impact statement, stating that the allegations by the landlord are biased and without merit.

The tenant described the physical and mental impact of the possibility of an eviction, and states that they were proud that they took action to turn the gas generator off as "Carbon monoxide kills". The tenant states that there was at least one child and elderly tenant in the building, and the tenant believed that their actions contributed to keeping them safe. The tenant states that they are on disability and a fixed income, and would be impacted greatly if they were to become homeless.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application disputing the 1 Month Notice within the required time limit, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the submissions and evidence of both parties. In light of the evidence before me, I find it undisputed that the described incidents did take place where the tenant had confronted other tenants in the building, either in person, or in writing, about their behaviour. The tenant feels that their actions were justified in each occasion in the interest of health, safety, and quiet enjoyment. The tenant also feels that the threats of eviction are in retaliation for the tenant's complaints.

The landlord testified that regardless of the issues the tenant has with the other tenants, the tenant has taken it upon themselves to approach the tenants directly instead of going through the appropriate avenues. The landlord testified that the tenant continues to do so despite being provided with at least one written warning, and the tenant refuses to change their behaviour as they do not see that they are doing anything wrong. The landlord described the impact the tenant's behaviour has had on other tenants and the landlord, and feels that they have no other choice than to end the tenancy as they are not confident that the tenant will stop.

In light of the evidence and testimony before me, I am satisfied that the landlord had provided sufficient evidence for me to conclude that the tenant has significantly interfered with and unreasonably disturbed other tenants as well as the landlord, and I

find that their behaviour and actions justify the ending of this tenancy. Although the tenant feels justified in their actions, I am not satisfied that the tenant did not have other options than to act in the manner that they have.

In light of the noise complaints from neighbours, the tenant lives in a building that has both commercial and residential tenants, and the possibility of noise and resulting confrontations can be quite high. Although I am sympathetic towards the tenant and how noise can impact the tenant's ability to enjoy their rental unit, the tenant had other options to deal with the unresolved disputes such as contacting the police, bylaw enforcement, or by filing an application for dispute resolution if the landlord failed to address the issues. I am satisfied that in this case, the landlord had responded to the tenant, and had warned the tenant that their decision to approach other tenants directly could possibly result in eviction.

Despite the warning letter, the tenant continued to approach other tenants, including commercial tenants who rent in the building. Although the tenant disputes that this resulted in one of the commercial tenant's decision to terminate the lease, it remains undisputed that an incident did take place where the tenant demanded that a generator be turned off. I have considered the tenant's fears and concerns, and although I understand that the tenant truly did believe that the generator was harmful, I find that the tenant had again taken it upon themselves to approach the party directly, instead of other alternatives such as calling the police, or filing a formal complaint. This incident took place a few days after the tenant had approached another commercial tenant about late night noise.

I find that the landlord had established that the tenant has engaged in a pattern of behaviour where the tenant feels it is appropriate to confront other tenants about their behaviour, despite being warned not to do so. Although understandably, the tenant was frustrated, fearful, or upset, I find that considering the number of tenants in the building, the tenant's decision to address these issues in this manner has a significant impact on the landlord's obligation to ensure the quiet enjoyment of all the tenants in the building. I find that the tenant had other options, which the tenant did not pursue, even in the case that the tenant felt that the landlord was ignoring the tenant's concerns.

Lastly, although I acknowledge the significant impact the termination of this tenancy would have on the tenant, I find that the landlord did give the tenant an opportunity to correct or change their behaviour, but they did not. I do not find the actions of the landlord to be retaliatory, or biased, and I am satisfied that the landlord had demonstrated that they had attempted to address the matter before the service of the 1

Month Notice on June 29, 2021, over a year after the tenant was served with a warning letter. I find during the hearing, the tenant has not acknowledged any wrongdoing, and I am not confident that the tenant will change their behaviour.

As stated earlier, although understandably upset or frustrated, the tenant had the option to file an application for dispute resolution in the event that the landlord failed to address the outstanding issues in this tenancy. Based on the ongoing actions and correspondence from the tenant, the tenant was clearly unhappy with the numerous issues that they felt were not addressed during this tenancy.

I do not find the tenant's actions to be justified. As stated above, regardless of merits of the tenant's complaints or grievances, the question is whether the tenant's actions were significant enough to justify the end of the tenancy on the grounds provided on the 1 Month Notice. Although I sympathize with the tenant that there were issues that have taken place during this tenancy which have not been addressed by the landlord, I find that the tenant's actions have caused a significant and unreasonable disturbance to the landlord and other tenants in the building. Accordingly, I dismiss the tenant's application to cancel the 1 Month Notice dated June 29, 2021.

Section 55(1) of the *Act* reads 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 find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date

of the 1 Month Notice, July 31, 2021. As the tenant has not moved out, I find that the landlord is entitled to an Order of Possession. As requested by the landlord's agent in the hearing, the date of the Order of Possession will be granted for the end of November 2021. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on November 30, 2021, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of July 31, 2021.

I grant an Order of Possession to the landlord effective 1:00 p.m. on November 30, 2021. Should the tenant(s) 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: November 3, 2021

Residential Tenancy Branch