



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 450617 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the “Act”), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause dated September 29, 2021 (the One Month Notice); and
- an order to recover the filing fee.

The Tenant (GM) and Landlord were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

GM testified they served their Notice of Dispute Resolution Proceeding and evidence on the Landlord by registered mail on October 20, 2021; the Landlord confirmed receipt. I find GM served the Landlord in accordance with section 89 of the Act.

The Landlord did not submit documentary evidence in response to GM’s application.

Issues to be Decided

Is Tenant GM entitled to an order to cancel the One Month Notice?

If not, is the Landlord entitled to an order of possession?

Is Tenant GM entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on September 1, 2020; rent is \$1400.00, due on the first of the month; and GM paid a security deposit of \$700.00 which the Landlord still holds.

GM submitted a copy of the One Month Notice as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The One Month Notice indicates the tenancy is ending because the tenant or a person permitted on the property by the tenant has 1) significantly interfered with or unreasonably disturbed another occupant or the landlord, and 2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord began their testimony by describing how the tenants living below GM, good tenants who had been living in the building for three and a half years, moved out last month because of noise produced by GM, which frequently interrupted their sleep. The Landlord testified the noise would occur at 2:00, 3:00, or 4:00 in the morning. They read from an email from the tenants below GM, dated October 21, 2021, which stated the tenants were moving out due to the disturbance and harassment from GM, including banging, screaming, and throwing things, such that the tenants found it impossible to sleep through the night. In the email, the tenants described feeling attacked by GM, especially when GM rang their buzzer and knocked on their door to make accusations. The Landlord testified that these tenants had been the best in the building. The Landlord testified they have three or four similar emails from the tenants who have now moved out, though the Landlord did not submit any of the emails as evidence.

The Landlord said they spoke with GM about the situation, and that GM stated the tenants below were doing hard drugs, and that GM accused the Landlord of not doing anything about it. The Landlord testified they believe GM imagines other tenants are smoking cigarettes and drugs, and that other people are frequently coming into the building at night. The Landlord testified that one of the tenants who had been living in the unit below has breathing problems due to asthma, and that neither of the tenants below had smoked.

The Landlord read from an email from a tenant who lives beside GM, dated October 24, 2021. The Landlord testified that about a month ago, the tenant next door to GM told the Landlord that GM had been knocking on their door to complain. The tenant's email stated that on two occasions GM had banged on the tenant's door and accused them of

prostitution and selling drugs. The email stated that GM had harassed the tenant by walking back and forth in front of the tenant's door for about 15 to 20 minutes, and by banging on the shared wall, throwing heavy furniture against the shared wall, and dragging heavy items along the floor.

GM testified that they had twice gone to the unit next door, to tell the neighbour they had to keep their smoke from coming into GM's unit.

GM initially testified they were not banging, throwing, or dragging anything, only coughing. GM then testified: "Yes, I have lost it a few times," stating that they have stomped on the floor, and once rang the buzzer of the tenants below, because GM was frustrated they were smoking drugs in bed. GM testified that they "screamed" at the tenants, and "was rude." GM described an incident that occurred on New Year's Eve, 2021. GM testified that the tenants below and friends they had over were smoking in the unit, and "had no boundaries." GM testified that "I flipped out on them," and that the police were summoned by the tenants below. GM testified that the police told GM they were causing a disturbance.

Tenant GM testified that since then, there has been "nothing," but then stated that a few months ago they banged their foot on the floor. Tenant GM stated there is plenty of smoke coming into their unit, but that when they call the Landlord, the Landlord is dismissive.

The Landlord testified that they must provide quiet enjoyment to the tenants in the building, and that they are concerned GM will exhibit the same behaviour toward the new tenants who have just moved into the unit below. In their testimony, GM stated that the new tenants below are doing "the same stuff" as the previous tenants.

Analysis

Section 47 of the Act allows a landlord to end a tenancy by giving notice if a tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Section 47 specifies:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Based on the evidence before me, and on a balance of probabilities, I make the following findings.

I find that the Landlord served the Tenant the One Month Notice by posting it on the door of the rental unit on September 29, 2021, the day the Tenant received it. I find the One Month Notice served in accordance with section 88 of the Act, and that it meets the requirements of section 47(2). I note that while the effective date is incorrect in that it is the day in the month that rent is payable under the tenancy agreement, the effective date has already passed, and section 53 of the Act provides that incorrect effective dates are automatically changed. I find the One Month Notice meets the form and content requirements of section 52 of the Act.

I accept the Landlord's affirmed testimony describing how GM has significantly interfered with and unreasonably disturbed other occupants of the residential property, and that the Landlord is concerned the new tenants below GM will have similar experiences with GM, such as behaviours which prevented the previous tenants below from sleeping through the night, and ultimately caused them to move out. The Landlord's concern seems reasonable, particularly given GM's testimony that the new tenants below are doing "the same stuff" as the previous tenants, who the Landlord had described as the best in the building.

While GM's testimony is inconsistent, they did corroborate much of the Landlord's testimony, in that GM described how they "have lost it a few times," stomped on the floor, rang the buzzer of the tenants below, screamed at tenants, "flipped out" on tenants, and that the police told GM they were causing a disturbance in the rental property.

Therefore, the One Month Notice is upheld. And, pursuant to section 55(1), the Landlord is granted an order of possession.

As GM has been unsuccessful in their application, I decline to award them the filing fee, pursuant to section 72 of the Act.

Conclusion

Tenant GM's application is dismissed.

I hereby grant the Landlord an order of possession, which must be served on the Tenant and which is effective two (2) days from the date of service. This order may be filed in, 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 12, 2021

Residential Tenancy Branch