



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

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

The hearing was conducted via teleconference. The Landlord's Agent, LT, and an employee trainee, LG, attended the hearing at the appointed date and time. The Tenant, GE, did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that LT and I were the only ones who had called into this teleconference.

The Landlord's Agent was advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure (the "ROP") prohibits the recording of dispute resolution hearings. LT testified that she was not recording this dispute resolution hearing.

LT was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

GE had not served the Landlord with the Notice of Dispute Resolution Proceeding package (the "NoDRP package") and all evidence. LT testified that GE provided a handwritten note to the office that she made an application with the RTB and provided the file number for this matter. LT contacted the RTB and requested a courtesy copy of the NoDRP package. I find the Landlord was not served in accordance with the Act.

Issue to be Decided

Is the Tenant entitled to cancelation of the One Month Notice?

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.

LT testified that this tenancy began as a fixed term tenancy on June 1, 2017, ending on February 28, 2018. The tenancy then continued on a month-to-month basis. Monthly rent is \$866.00 payable on the first day of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the Landlord.

LT served GE with a One Month Notice to End Tenancy for Cause by posting the notice on GE's door on October 15, 2021 (the "One Month Notice"). The reason noted for ending this tenancy was that there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The effective date of the One Month Notice is December 31, 2021.

LT said the material term of the tenancy agreement that was breached was in Addendum "B":

8. *The tenant(s) and their guests are required to conduct themselves in a manner that does not negatively affect the peace, security or safety of the community.*
9. *Tenants are required to abide by the quiet-hours policy of the Society. Tenants are required to keep noise levels down from 11:00 P.M. to 7:00 A.M.*

LT stated that GE repeatedly complains about noise from the upstairs tenant. The upstairs tenant's suite number is 2120. GE, who faces west in the building, on multiple occasions has knocked on the tenant's door who lives in suite number 2240 (who faces south) to complain about noise above her. LT said the upstairs tenant above GE has lived in the building longer than GE, and the Landlord has never received a complaint about noise from this tenant.

LT said that GE is abusive to staff. LT provided audio recordings from GE's calls to the office where she has complained about the office staff 'not doing their jobs' and has used abusive and bullying language. LT's documentary evidence package also contains other letters from occupants in the residential property who have reported GE's

continuous harassment on them. LT testified that GE's conduct has resulted in significant interference with other occupants of the residential property.

LT gave evidence that the office has given written notices this year on February 16 (a warning letter), May 5, August 12, August 17 and October 15, setting out that there is a problem, and they determine these to be breaches of their tenancy agreement. All these letters were submitted into documentary evidence, and they set out advice to GE how the problems can be rectified, and if not fixed, that termination of the tenancy will be the result.

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. As this hearing was conducted pursuant to ROP 7.3, in the Tenant's absence, all the Landlord's testimony is undisputed.

The Landlord's One Month Notice is based on Section 47(1)(h), the Act says:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

....

(h) *the tenant*

(i) *has failed to comply with a material term, and*

(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

....

Based on the undisputed evidence of the Landlord, I find that the frequent disturbances from GE have resulted in her breaching a material term of the Society's tenancy agreement. Falsely accusing other tenants as being the cause of noise in her rental unit, harassing and swearing at other tenants in the building, and harassing and bullying the staff negatively affects the peace, security or safety of the other occupants and the Landlord. I find the Landlord was prudent in providing written notices to GE about her offensive conduct; however, GE has not endeavoured to rectify her conduct. The

abusive conduct of GE continues. I find that GE's application to cancel the Landlord's One Month Notice is dismissed.

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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 One Month Notice submitted into documentary evidence complies with Section 52 of the Act. Based on LT's undisputed testimony, and GE's failure to attend this hearing and present evidence relating to her application, I order that her application for dispute resolution to cancel the One Month Notice is dismissed without leave to re-apply.

I uphold the Landlord's One Month Notice and grant an Order of Possession to the Landlord which will be effective on December 31, 2021.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective at 1:00 PM on December 31, 2021. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

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: November 19, 2021

Residential Tenancy Branch