



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1134147 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, dated October 23, 2021 (the One Month Notice); and
- the filing fee.

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

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord by registered mail on November 5, 2021. The Landlord testified she received the mailed package from the Tenant, but could not view the documents via the enclosed USB stick. The Landlord testified she was able to view the documents sent by the Tenant to an email address agreed upon for service. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified she served her responsive evidence on the Tenant on December 6, 2021, via an email address agreed upon for service. The Tenant confirmed he received the documents. I find the Landlord served the Tenant in accordance with section 89 of the Act.

Issue(s) to be Decided

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

Is the Tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on May 1, 2019; rent is \$1,100.00, due on the first of the month; and the Tenant paid a security deposit of \$550.00, which the Landlord still holds.

The Landlord testified she served the One Month Notice on the Tenant by posting it to the door on October 23, 2021. The Tenant guessed he received the Notice the same day. A copy of the One Month Notice was submitted as evidence.

The One Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons 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:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Details of the Event(s) section of the One Month Notice includes the following:

At 3:29pm on Tuesday October 19, 2021 I received a text message from a tenant to call me as soon as possible regarding an incident that just happened outside her studio. When I called her she described a verbal harassment and terrifying encounter with [the Tenant] from Apartment #2 upstairs. She was notably upset, shaken and very scared. She said that it took 3 additional people, observing pedestrians who stepped in to help, to get him to leave. These people were all concerned for [the downstairs tenant's] safety as well. [The downstairs tenant] is now very fearful for her safety. She has also lost revenue, thus interfering with her livelihood, because of [the Tenant's] harassment. This was not the first occurrence of unacceptable behavior. Prior to this event on August 8, 2021 he banged on her door and disrupted her class, causing potential long term clients to not return. ... A tenant expects their space, inside and out, to be safe. As a landlord, I am responsible for providing my tenants with a secure place to reside.

This notice is given with the intent to keep [the downstairs tenant] safe and to keep her from any more disruptions to her livelihood.

The Landlord provided testimony describing the above events, and called the downstairs tenant as a witness, who corroborated the details of the Notice and the Landlord's testimony.

The Landlord testified that the downstairs tenant rents commercial space below the Tenant's residential unit, and operates a business out of the commercial space. Neither the Landlord nor her witness testified that the downstairs tenant resides in the commercial unit. A copy of the commercial lease was submitted as evidence.

The Tenant testified that the dispute stems from a noise complaint he made to the Landlord about the downstairs tenant, which the Landlord refused to deal with. The Tenant also testified that recent renovations to the space below their rental unit appear to have removed the soundproofing between the two units, such that now the Tenant can hear not just music from the unit below, but even talking.

The Tenant testified that as he drives a large garbage truck, it is important he gets his sleep, so as to be alert on the job and avoid possible tragic accidents. The Tenant testified that noise from the downstairs tenant disturbs his sleep.

Analysis

Based on the Landlord's testimony, I accept that the One Month Notice was served on the Tenant by posting it to the door on October 23, 2021, in accordance with section 88 of the Act. I accept the Tenant's testimony that he received the One Month Notice the same day. I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Section 47(1)(d) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if:

- (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,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, ...

I note that section 47 refers specifically to occupants and landlords of residential property.

Section 2(1) of the Act states that the Act applies to tenancy agreements, rental units and other residential property.

[Residential Tenancy Policy Guideline 14. Type of Tenancy: Commercial or Residential](#) draws a distinction between commercial and residential tenancies, and states that the *Residential Tenancy Act* does not apply to a commercial tenancy.

I accept the Landlord's affirmed undisputed testimony that the Tenant rents a residential unit, and the downstairs tenant rents a commercial space.

As the Landlord's presented documentary evidence, testimony, and witness testimony describe the alleged impact the Tenant has had on solely the commercial tenant, not on residential tenants or the Landlord, I find that the Landlord has failed to prove the reasons to end the tenancy as identified in the One Month Notice.

Therefore, the One Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in his application, I order that the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment to recover from the Landlord the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Conclusion

The Tenant's application is granted.

The One Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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: December 23, 2021

Residential Tenancy Branch