



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Broad Street Properties and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, DRI

Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order extending the time to file an application disputing the Notice issued by the landlord; and
- to dispute a rent increase that is above the amount allowed by law.

The tenant, the tenant's advocate, and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing.

All parties affirmed they were not recording the hearing.

The tenant confirmed receiving the landlord's evidence. The agent confirmed receiving the tenant's application with evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

At the beginning of the hearing, the Notice was discussed, in that I had received only the 1st and 3rd page of the 3-page Notice. The agent said they did not provide a copy and the tenant said she thought the full copy had been submitted.

Testimony was taken as to the contents of the 2nd page of the Notice and the parties agreed as to the contents. During the hearing, I allowed the advocate to upload the 2nd page, and the contents reflected the evidence taken at the hearing.

Additionally, Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two matters of dispute on the application, the most urgent of which is the application to cancel the Notice. I find that the claim to dispute a rent increase is not sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notice. The balance of the tenant's application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Although the tenant applied for additional time to file her application, I find the tenant's application was filed within the correct timeframe allowed under the Act. The tenant's application was made on the first business day after the 10th day of receipt of the Notice.

I informed the parties of this decision at the hearing.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The undisputed evidence is that this tenancy began on or about February 1, 2021. The rental unit is in a multi-story, multi-unit building, occupied by other tenants of the landlord. Filed in evidence was the written tenancy agreement.

Between the parties, a full copy of the Notice was filed in evidence. The Notice was dated July 23, 2021, for an effective date of August 31, 2021, and was served on and received by the tenant on July 23, 2021.

The reasons stated on the Notice to end tenancy were:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The agent provided the following testimony and references to their documentary evidence:

The agent submitted that beginning in May 2021, they began receiving multiple complaints regarding the tenant's son's drug use on the property and loud noise. In particular, the agent submitted that the tenant's son and friends were smoking marijuana using drug paraphernalia on the residential property and smoking directly outside other occupants' rental units.

The agent submitted that the tenant was issued at least three written warnings about her son's behaviour and illegal activity due to underage drug use and leaving stained cotton buds and resin on the common property, which was a health and biohazard to other occupants. Despite these warnings, the tenant's son continued to smoke marijuana using drug paraphernalia and leaving dirty cotton buds and resin on the common property. Filed in evidence were the written warnings.

The agent said she was practically accosted by another tenant on July 21, 2021, who was extremely frustrated that the landlord had not done anything about the loud parties,

underage drinking on the patio, and the tenant's son walking around the premises smoking marijuana.

In another instance, the tenant's son was caught smoking marijuana on the residential property by the property manager, who told him he could not smoke on the property. The property manager reported that the tenant's son became extremely rude and loud, telling them to shut-up. Filed in evidence was the written report and a witness' statement, and photographs of the tenant's son and friends smoking around a picnic table outside another tenant's rental unit.

The tenant provided the following testimony in response to the landlord's application and evidence:

The tenant said that a maintenance employee told the son that he would be fine smoking in the gazebo on the residential property and that afterwards, the son only smoked in the gazebo. The tenant said that it was not just her son who was smoking on the property and that now, he only goes to a field on the other side of the fence to smoke.

The tenant submitted that her son had been troubled, so he smoked marijuana to calm his nerves. The tenant submitted that her son is now going to school and he does not smoke as much.

Analysis

Section 47(1)(d)(i) of the Act authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 28 of the Act states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the

rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The landlord submitted that the tenant's son has been repeatedly smoking marijuana from a bong on the property and that the tenant had been issued repeated written warnings, yet the smoking continued.

The written warnings also reflect that the tenant was notified her son left dirty cotton buds and resin stains on the picnic tables, which were both unsanitary and a biohazard during Covid.

Another occupant of the residential property also complained to the landlord that they were doing nothing to stop the tenant's son from smoking marijuana, drinking, and having loud parties.

The landlord's undisputed evidence showed that the tenant was given multiple written warnings about her son's behaviour. However, I find the evidence shows that the tenant's son continued to smoke marijuana and carry drug paraphernalia on the residential property. The tenant even agreed her son smoked marijuana on the premises.

There were reports from other occupants about the tenant's son shouting at and being extremely rude to the property manager and another occupant reporting underage drinking, loud parties and the tenant's son walking around with drug paraphernalia, and smoking marijuana. The property manager reported that the tenant's son became extremely rude and loud and told them to "shut-up" when cautioning the son about smoking on the premises. These reports were unchallenged by the tenant.

I find a reasonable person would be unreasonably disturbed by the illegal behaviour of underage drinking and marijuana smoking around the residential property, loud parties, aggressive behaviour of the tenant's son, and leaving dirty cotton buds and resin stains on common property. Further, I find the landlord's photographic evidence clearly shows the tenant's son and friends were smoking directly outside other occupants' rental units, which I find supports that other occupants were deprived of their right to quiet enjoyment of their rental unit.

I further find the landlord's evidence showed they asked the tenant to respect their warnings so that they would not lose the tenant and yet, the evidence shows the tenant chose not to address her son's behaviour, or at least not to the extent her son's behaviour improved.

I find the landlord was left with no choice but to issue the tenant the Notice, to preserve the quiet enjoyment of all their other tenants.

Given that I find the landlord's oral and documentary evidence to be credible, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that a person permitted on the residential property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

As I have found the landlord has proven at least one of the causes they listed on the Notice, it was not necessary to consider the other listed cause.

Conclusion

I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the landlord's evidence, and therefore, enforceable.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective **two (2) days after service on the tenant**.

The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 8, 2021

Residential Tenancy Branch