



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Landlord stated that the Tenant served him with the Dispute Resolution Package, by registered mail. Although he is not certain of the date of service, he believes it was in October of 2021.

This hearing was scheduled to commence at 9:30 a.m. on January 13, 2021. The Landlord dialed into the teleconference prior to the scheduled start time of the hearing. By the time the teleconference ended, at approximately 9:50 p.m., the Tenant had not joined the teleconference.

The Tenant submitted a copy of a tenancy agreement to the Residential Tenancy Branch, which declared the tenancy began on November 15, 2021. The Landlord stated that this agreement was not served to him as evidence for these proceedings and he does not have a copy of that agreement. As the Tenant did not attend the hearing to establish service of this document, the Landlord does not acknowledge receipt of it, and the Landlord does not have a copy of it, it was not accepted as evidence for these proceedings.

The Tenant submitted a copy of the first page of a One Month Notice to End Tenancy for Cause. The Landlord stated that this evidence was not served to him as evidence for these proceedings. He stated that he has a complete copy of the One Month Notice

to End Tenancy for Cause and he is willing to have the Tenant's evidence considered as evidence for these proceedings. As the Landlord has a complete copy of the One Month Notice to End Tenancy for Cause and he is willing to have the first page of the document considered as evidence for these proceedings, that evidence was accepted as evidence for these proceedings.

On January 07, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was placed in the Tenant's mail slot on January 06, 2022

Section 90 of the *Residential Tenancy Act (Act)* stipulates that documents placed in a mail slot are deemed received on the third day after being left in the slot. I therefore find that the Landlord's evidence is deemed to have been received by the Tenant on January 09, 2022. The Landlord stated that he delayed serving these documents because he hoped the Tenant would move out prior to the hearing.

Residential Tenancy Branch Rules of Procedure stipulate that a Respondent's evidence must be received by the Applicant at least 7 days prior to the hearing. As the Landlord's evidence is not deemed received until January 09, 2022, I find it was not served in accordance with the Residential Tenancy Branch Rules of Procedure and it was not accepted as evidence for these proceedings. The Landlord was advised that he may testify regarding his evidence, but I will not be considering the physical documents.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed he would not record any portion of these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord stated that:

- The Landlord and the Tenant initially signed a tenancy agreement that declared the tenancy would begin on November 15, 2020;
- The Tenant was unable to move into the unit on November 15, 2020, so they signed a second tenancy agreement that declared the tenancy would be begin on December 01, 2020;
- The tenancy began on December 01, 2020;
- He personally served the Tenant with all three pages of a One Month Notice to End Tenancy for Cause on August 25, 2021, which declared that the rental unit must be vacated by September 30, 2021;
- The Tenant is still occupying the rental unit; and
- The Tenant has paid rent for January of 2022.

The Landlord stated that the second page of the One Month Notice to End Tenancy for Cause that was served to the Tenant declared that the tenancy was 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; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; the tenant or person permitted on the property has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and the tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

The Landlord read out the information provided in the "Details of the Events" section of the One Month Notice to End Tenancy for Cause. While I will not record those details in this decision, it is clear from the information provided that the Landlord informed the Tenant he is attempting to end the tenancy, in part, because of noise disturbances caused by the Tenant and/or his guests.

In support of the application to end the tenancy on the basis of noise disturbances, the Landlord stated that:

- The Strata has received numerous complaints from other occupants of the residential complex regarding music and partying in the rental unit;
- Those complaints were forwarded to him by the Strata;
- Between February 09, 2020 and August 25, 2021, he received nine noise complaints from the Strata;
- On each occasion he has discussed the complaints with the Tenant by text message or by telephone;
- He has repeatedly advised the Tenant that his behaviour is disturbing other occupants; and
- He has received two or three Strata fines in regard to the disturbances.

Analysis

Section 47(1) of the *Act* permits a landlord to end a tenancy by giving notice to end a tenancy for various reasons, including:

- (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, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

On the basis of the undisputed testimony of the Landlord, I find that on August 25, 2021 the Tenant was personally served with all three pages on the One Month Notice to End Tenancy for Cause, which declared that the rental unit must be vacated by September 30, 2021.

On the basis of the undisputed testimony of the Landlord, I find that the One Month

Notice to End Tenancy for Cause declared that the tenancy was ending pursuant to sections 47(1)(d)(i), 47(1)(d)(ii), 47(1)(d)(iii), 47(1)(e)(i) and 47(1)(e)(ii).

I find that the Landlord has provided sufficient evidence to show that the Tenant has reasonably disturbed another occupant or the Landlord. In reaching this conclusion I was heavily influenced by the Landlord's undisputed testimony that between February 09, 2020 and August 25, 2021, he received nine reports of noise disturbances in the rental unit and that he has been fined for those disturbances on at least two occasions.

On the basis of the undisputed testimony of the Landlord, I find that the Tenant has been made aware that he is disturbing other occupants and that he continued to disturb other occupants.

As the Landlord has establish grounds to end this tenancy pursuant to section 47(1)(d)(i) of the *Act*, I dismiss the Tenant's application to set aside this One Month Notice to End Tenancy for Cause.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

On the basis of the first page of the One Month Notice to End Tenancy for Cause that was submitted in evidence by the Tenant and the testimony of the Landlord regarding the information on page two of the One Month Notice to End Tenancy for Cause, I am satisfied that the One Month Notice to End Tenancy for Cause complies with section 52 of the *Act*. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective on **January 31, 2022**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that 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 *Residential Tenancy Act*.

Dated: January 13, 2022

Residential Tenancy Branch