



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FFT

Introduction

This hearing dealt with the tenant's (AH) application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

AH attended the hearing with his roommate (AC). The landlord was represented at the hearing by the Manager. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

AH testified, and the Manager confirmed, that AH served the landlords with the notice of dispute resolution form and supporting evidence package. The Manager testified, and AH confirmed, that the Manager served AH with their evidence package. Both parties provided Canada Post tracking numbers confirming this mailing which is reproduced on the cover of this decision. I find that all parties have been served with the required documents in accordance with the Act.

At the outset, I advised the parties of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The parties confirmed that they were not recording the hearing.

I also advised the parties that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I note s. 55 of the *Act* requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue

At the start of the hearing, a party called into the hearing. After a brief discussion, it was determined that the party had called into the wrong hearing. The party disconnected and the hearing commenced.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If the tenant fails in this application, is the landlord entitled to:

- 1) an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting July 1, 2020. Monthly rent is \$1250.00, payable on the first of each month. AH paid the landlords a security deposit of \$625.00. The landlords still retain this deposit.

AH stated that he filed the application for dispute resolution because he was "curious about why [he] was given the notice without any warnings". He said he "should get a verbal and written warning" before eviction.

AH stated, "I don't know why the notice was issued, I did not do anything wrong." He asked, "How do I put people at risk? What evidence is there of illegal activities?"

The Manager testified on December 18, 2021, she awoke to successive text messages from different tenants about "loud screaming, fighting, and a commotion" in AH's suite. The tenants described crying, screaming, shouting, pounding and what sounded like a woman being beaten. Several tenants from multiple units went into the hall to investigate. A young woman with a "busted lip" came out of AH's rental unit into the hall, crying and hid in one of the neighbor's apartments until the police arrived. An ambulance arrived and the young woman was taken to the hospital.

The Manager stated four (4) letters or incident reports from four (4) different tenants regarding the morning of December 18 were included in her evidence; however, I was only able to find two (2) submitted written statements from the tenants living in the complex who responded to the incident of December 18, 2021, called 9-1-1- and texted her. The Manager summarized the tenants accounting of events at the rental unit on December 18, 2021, as follows:

One witness stated he was awakened 3 times in the early morning hours of December 18, 2021, by loud screams. The first time he woke up was at 3:20 a.m. By 5:20 a.m. he again awoke to the sound of screams, got up and went to investigate. He knocked on AH's door, but no one answered. He heard screaming coming from the other side of the door. He knocked a second time while on the phone with 9-1-1. The door opened and a "young girl in her early 20's with a busted lip, came into the hall crying. She hid in a neighbor's apartment until the police arrived.

In a second witness statement, the tenant said around 5:45 a.m. he awoke to what sounded like someone pounding loudly on the wall or being shoved or hit into a wall. He heard a male shouting and the "distinct sound of someone being hit or kicked" and a "female crying and screaming in absolute fear". The witness got out of bed, dressed, grabbed his phone, and went into the hallway. He was about to call the police, but his neighbor was already on the phone with the police. knocking

on the door. He states, "because of what was going on" that "the whole side of the building was in the hallway...even kids from other apartments".

The Manager testified that she spoke to the young woman who told the Manager that she did not want the police to lay charges because she lived in a different province and could not afford the expense of traveling back and forth to go to court. The Manager testified that the young woman was quite badly beaten. When asked if the Manager could use her photos and information for the hearing, and if she would be willing to testify, the young woman said she did not want her information shared. The young woman also disclosed that AH was both selling and using drugs.

The Manager testified that before the December incident, she had had repeated conversations with AH about various issues. On November 10 2021, for example, a single mom with two children in a different building in the complex, called the Manager 'spooked' because an unknown woman was wandering barefoot in her yard. After investigating, the Manager learned that the woman was AH's roommate, but AH had not told management that AC was living with him. The Manager issued a caution notice to AC citing mostly the same issues as identified on the One Month Notice for Cause.

A third witness wrote that AH, has multiple people coming and going into the townhouse by way of the patio. These people enter the property "through the fence" and access AH's rental unit by way of the patio. The witness states that AH grows marijuana on his patio. He writes, "I have also had people recently knock on my patio door asking for [AH]."

The Manager testified the One Month Notice to End Tenancy for Cause was posted on AH's door on December 18, 2021. The Proof of Service Notice was provided into evidence.

AH responded to the landlord's evidence by stating that he "did nothing wrong" and pointed to the fact the police did not lay charges. AH states that the young woman was a friend of AC's, a visitor from out of town. She was only staying a few days. The "scuffle" started when AH noticed the young woman stole from him. AH stated it was the young woman that started the fight and, in fact, broke his expensive glasses into three (3) pieces. He disputes that the woman was taken to the hospital.

AH did not speak with the police at the time. The police called and spoke with him about a half hour later, after they conducted their investigation. They asked AH if he could provide contact information for the young woman. AH told the police he did not have the woman's information.

AH points out that there is no evidence that he is involved in illegal activity and that the allegations are hearsay and unsupported with facts.

AH stated that before this incident, AC was trying to be added to the tenancy agreement and was on three (3)-month probation prior to being added. As a result of this incident, AC has unfairly been denied tenancy.

AH self describes as a "quiet tenant" who keeps to himself. He suffers from bad anxiety and does not like to bother people. He is "very respectful". He describes the complex as a "great family community". His children come to stay over the weekend and have friends in the building. He pointed out that other than one warning notice, there have been no issues. AH does not dispute an assault occurred but reiterated he did not initiate –the young woman stole from him and started it. He feels that he is being "unfairly blamed for an incident he had no control over". Again, he emphasized that the visitor, not he, was the party responsible. He concluded by asking, "How can I predict how anyone will behave?"

Analysis

Section 47(4) of the *Act* states that upon receipt of a notice to end tenancy for cause, the tenant may, within ten (10) days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. In the present case, AH applied for dispute resolution on December 27, 2021. Accordingly, I find that AH was within the statutory limit to dispute the One-Month Notice.

The first issue in AH's application is a request for an order to cancel the One-Month Notice to End Tenancy for Cause dated December 18, 2021

In the present case, the first reason provided by the landlord to end tenancy was that AH *or a person permitted on the residential property by AH* "significantly interfered with or unreasonably disturbed the landlord or other occupants". The onus of proof falls to the landlord. In other words, it is necessary for the landlord to establish whether or not AH *or a person permitted on the residential property by AH* violated the *Act* by engaging in conduct that significantly interfered with or unreasonably disturbed others, *of a magnitude sufficient to warrant ending the tenancy* under s.47(1) of the *Act*. It is only necessary for the landlord to demonstrate that one of the provisions was contravened in order to dismiss AH's application for cancellation of the Notice to end Tenancy for Cause.

The Manager and AH agree to the following facts:

- on December 18, 2021, in the early morning hours, an incident occurred in AH's rental unit;
- the police and ambulance were called to the scene;
- no charges were laid with respect to this incident;
- the incident was between a female visitor and AH;
- the young woman was a friend of AC;

I accept the above referenced statements as fact.

Based on written witness statements, from the tenants personally present, and the testimony of the landlord with respect to the December 18, 2021 incident, I accept the following as fact:

- several tenants, including children, from different rental units awoke to the sounds of yelling, screaming, and what sounded like someone being beaten starting in the early morning hours of December 18, 2021;
- the incident was so loud that the tenants left their individual residences, went into the hall to investigate, and called 9-1-1;
- a young woman left AH's rental unit with a "busted lip", crying;
- the Manager received successive and multiple texts from several tenants alerting her to the "commotion";
- no police report was entered as evidence.

I have also considered and accepted as fact the two described incidents prior to the December 18, 2021, incident.

The first incident was complaint driven and resulted in a formal notice issued to AH on November 10, 2021. A tenant in another building called the Manager concerned about a stranger, a woman, wandering around barefoot in her yard, in November. The Manager learned the woman was AH's (illegal) roommate, AC. Although AH was issued a warning letter, the Manager agreed to assess AC's suitability for tenancy. AC filled out an application and was placed on a three (3) month

temporary trial/probation. The Manager repealed AC's application after the December 18, 2021, incident.

The second incident described by way of a written statement from a neighboring tenant reported that strangers walked onto his patio and knocked on his door asking for AH. The tenant observed on several occasions people accessing the common property "through the fence" and making their way to AH's rental unit via the patio. He observed that 'most don't stay long' and are in and out fairly quickly and has seen "sketchy people hanging outside the front of the building in the early morning hours".

I also accept as fact that AH's tenancy started on July 1, 2020, and the November 10, 2021, incident was the first documented incident prior to December 18.

The Residential Tenancy Guidelines provide little information about what may constitute "*significant interference*". I, therefore, turned to the Merriam-Webster online dictionary for definitions.¹

Significantly" (adv) is defined as "to a significant degree". "*Significant*" (adj) is defined in part as "large enough to be noticed".

Similarly, the term "unreasonably disturbed" is undefined in the Guidelines, but Black's Law Dictionary defines, "*unreasonable*" as: "*Irrational; foolish; unwise; absurd; preposterous; senseless...immoderate; exorbitant; ...capricious; arbitrary; confiscatory*".

Merriam-Webster defines "*unreasonable*" as "exceeding the boundaries of reason". "Reason" is defined as "a fact, condition, or situation that makes it proper or appropriate to do something, feel something".

Has the landlord provided sufficient evidence to establish that the tenant or a person permitted on the property by the tenant **significantly** interfered with **or unreasonably** disturbed another occupant or the landlord?

The written statements from the two witnesses personally present on December 18, 2021, provide a candid account of what each tenant heard and observed and how they became aware of the incident. Both witnesses attest to waking up to the sounds of an assault taking place in AH's rental unit – sounds of screaming, yelling, and the sound of someone being 'kicked and hit'. Both tenants were so concerned they left the safety of their homes to see what was going on and called 9-1-1. Both confirm that several neighbors were awake and in the hallway. These tenant witnesses are not related to each other and live in different rental units

The Manager's affirmed testimony states she awoke to multiple text messages about a "commotion" in AH's rental unit so loud that several tenants from 'that side of the building [near AH's rental unit] were in the hall' having been woken up by the sounds of an assault taking place.

The facts confirm that the incident of December 18, 2021, was significant, "*large enough to be noticed*" and interfered with or unreasonably disturbed not just "another occupant" but multiple occupants as well as the Manager.

¹ <https://www.merriam-webster.com>

AH argued that he should have first been issued a verbal warning, then a written warning, before the One Month Notice for Cause. Notwithstanding that AH did receive a written warning for the November 10, 2021, incident that unreasonably disturbed a tenant in a completely different building in a different area in the complex, I want to point out that the One Month Notice was not issued for a “breach of a material term” under s. 47(1)(h), which does require the landlord to follow a specific process. This One Month Notice was issued under s. 47(1)(d) and does not require the landlord to provide a written warning.

Although the landlord is only required to demonstrate that one of the provisions has been contravened to dismiss a tenant’s application to cancel the Notice and has done so, AH questioned how he “jeopardized [anyone’s] health and safety”? Aside from, the obvious concerns that the tenants put themselves at risk by intervening in an assault, s. 47(1)(II) reads “*seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant*”. I, thus, refer to s. 28 of the *Act* which protects every tenant’s right to quiet enjoyment.

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit, subject only to the landlord’s right to enter the rental unit under s. 29; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference. [emphasis added]

The evidence supports, on a balance of probabilities, that several tenants’ right to “quiet enjoyment” and “freedom from unreasonable disturbance” was violated by the incident that evolved over several hours in the early hours of December 18, 2021 and resulted in the police and an ambulance dispatched to the scene.

Taken in aggregate, balancing the length of AH’s tenancy and the one documented incident of November 10, 2021 against the written statements from the three (3) witnesses, the written warning of November 10, 2021 citing the same concerns as on the One Month Notice, the seriousness of the December 18, 2021 incident, and the oral testimony of the Manager, the evidence strongly suggests a pattern of overall conduct that not only disrupted the landlord’s business and peace of mind but “significantly interfered with or unreasonably disturbed” other tenants and negatively impacted their right to quiet enjoyment of their homes.

Taking into careful consideration the nature of the disturbance (assault), the oral testimony and documentary evidence presented and applying the law to the facts, I find on a balance of probabilities that the landlord has met the burden of proving the application for an Order of Possession under s. 55 of the *Act*.

I dismiss AH’s application to cancel the landlord’s notice to end tenancy. I uphold the Notice based on the first ground; therefore, there is no need for me to consider the remaining grounds. I find the Notice complies with s. 52 of the *Act*; therefore, pursuant to s. 55(1) of the *Act*, I issue the landlord and Order of Possession.

As AH’s application was unsuccessful, he is not entitled to recover the filing fee for the application from the landlord.

Conclusion

I dismiss the tenant's application to cancel the landlord's notice to end tenancy. I dismiss the tenant's application for recovery of his filing fee.

Pursuant to section 55 of the *Act*, I order that the tenant deliver vacant possession of the rental unit to the landlord within **two (2) days after service of this Order** on the tenant. The landlord is provided with a copy of this decision and attached order(s) and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in 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: February 10, 2022

Residential Tenancy Branch