



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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. The Tenant applied for:

- an order cancelling a One Month Notice to End Tenancy for Cause, dated November 2, 2021; and
- the filing fee.

Those in attendance 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) on the Landlord on November 17, 2021 by leaving it at the front entrance of the home where she picks up her mail. The Landlord confirmed she received the documents on November 20, 2021. I find the Tenant sufficiently served the Landlord on November 17, 2021 in accordance with section 71 of the Act.

The Landlord had provided no responsive evidence.

As neither party had uploaded a copy of the One Month Notice, I gave both parties the opportunity to upload a copy or submit a copy to a Service BC office for upload by 1:00 p.m. today. I advised the parties I would consider no other late evidence.

Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on December 2, 2020; rent is \$700.00, due on the first of the month; and the Tenant paid a security deposit of \$350.00, which the Landlord still holds.

The Tenant rents a room from the Landlord, who does not live in the unit. Rent includes access to spaces shared with other tenants, such as a kitchen and bathroom.

The Landlord testified they served the One Month Notice on the Tenant on November 4, 2021, by leaving it in the Tenant's shared kitchen. The Tenant testified he received it on November 9 or 10, 2021. A copy of the One Month Notice was submitted as evidence by the Landlord. The Notice is not signed by the Landlord. The Notice is dated by the Landlord, gives the address of the rental unit, states an 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 of the Landlord.

The Details of Causes section of the One Month Notice includes references to the Tenant:

- continuously making noise during the night, such that other Tenants cannot sleep;
- cooking after 10:00 p.m., making lots of noise and burning the food such that the smoke was so thick other tenants could not stay in their rooms;
- leaving the shared kitchen and washroom dirty, to the point where it caused another tenant to move out;
- often not closing the main door to the home after going outside; and
- wearing another tenant's shoes without their permission.

The Landlord testified that the two other tenants the Landlord shares the common spaces with have frequently and continuously complained that the Tenant makes noise at night, plays loud music at night after 10:00 p.m., makes the kitchen and washroom dirty and does not clean them, leaves the front door to the home wide open after he departs, has worn another tenant's shoes without their permission, has failed to turn off the stove multiple times, and smokes in his room, which is not allowed.

During the hearing, the Landlord played a recording from one of her other tenants, who is currently out of the country. In the recording, the other tenant states the date of the recording is February 6, 2022. The other tenant states that he has rented a room from the Landlord since 2019; he shares common spaces with the Tenant; the Tenant wore his shoes without apologizing; the Tenant has repeatedly forgotten to turn off the oven, the other tenant must help him turn off the oven, and the Landlord has spoken to the Tenant about this many times; the Tenant leaves garbage and recycling in the dining area, which moulds, smells, and attracts bugs and flies; and the other tenant stated he frequently smells cigarette smoke coming from the Tenant's room.

The Tenant testified that he is not the only person using the shared spaces, and that he is not going to clean up other people's messes. The Tenant testified that sometimes the garbage is full, and he cannot leave garbage outside as it will attract animals.

The Landlord testified that they have two large 350 litre garbage bins, so there should be lots of room in them for garbage, and no reason to leave garbage inside.

The Tenant testified that he does not smoke at all, but does vape. Regarding burning his dinner, and cooking in general, the Tenant testified that he burned his dinner one time, and that he works long hours, so sometimes it is late when he gets home and makes dinner.

The Tenant testified that he does get up early, and gets home late, but that the noise he is making is "regular noise" of getting ready in the morning, or cooking at night. He testified that he is not constantly up every night, that he is often in bed at 10:00 p.m. so as to be up at 5:00 a.m.

The Tenant testified that another tenant below him makes noise too, and asked how people know who the noise is coming from.

The Landlord testified that the Tenant is up at 5:00 a.m. and back late, and the late cooking noise disturbs the other two tenants, who are both quiet.

Analysis

Based on the parties' testimony, I find the Landlord served the Tenant the One Month Notice on November 4, 2021, in accordance with section 88 of the Act, and deem it received by the Tenant on November 9, 2021.

As the One Month Notice is not signed by the Landlord, I find it does not meet the form and content requirements of section 52 of the Act.

Although the Landlord did not sign the Two Month Notice, the Tenant did not raise a question about the identity of the landlord issuing it. I find the Landlord's name listed on the Two Month Notice sufficient for meeting the requirement of 52(a), which states the notice must be signed and dated by the landlord. Section 68 of the Act allows an arbitrator to amend a notice as follows:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

The One Month Notice, signed on November 2, 2021, also states an incorrect effective date of December 2, 2021. Section 53 of the Act states that incorrect effective dates are automatically changed. The corrected effective date is December 31, 2021.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Tenant received the Notice on November 9, 2021 and applied to dispute the Notice on November 12, 2021, I find the Tenant met the 10-day deadline.

Section 47 of the Act states that a landlord may end a tenancy if a tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; or
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

I accept the affirmed testimony of the Landlord that the Tenant is frequently loud during the night, such that it causes the other occupants to be unable to sleep; the other tenant's recorded submission that the Tenant leaves garbage and recycling in the dining area, which moulds, smells, and attracts bugs and flies; and the Landlord's submission that the Tenant leaves the shared kitchen and washroom dirty, to the point where it caused another tenant to move out.

I also accept the Landlord's affirmed testimony that the Tenant has repeatedly left the stove or oven on, and on several occasions has left the front door standing open after he has departed.

I accept the Landlord's audio submission from another tenant, stating that the Tenant has repeatedly forgotten to turn off the oven, the other tenant must help him turn off the oven, and that the Landlord has spoken to the Tenant about this issue many times.

Based on the Landlord's affirmed testimony and in-hearing audio submission, I find the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, and has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

Therefore, I find the Landlord is entitled to an order of possession.

As the Tenant is unsuccessful in his application, I decline to award him the filing fee.

Conclusion

The Tenant's application is dismissed. The One Month Notice is upheld.

The Landlord is granted an order of possession which will be effective two days after it is served on 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*.

Dated: February 07, 2022

Residential Tenancy Branch