



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Esquimalt Properties LTD
and [tenant name redacted to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 7, 2021, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated December 1, 2021, (the One Month Notice);
- an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement; and
- the filing fee.

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

The Tenant testified that she did not serve the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the Landlord.

Landlord RC testified that the Tenant served the NDRP on the building manager, who gave it to the Landlords on or around December 10, 2021. I find the Tenant's NDRP sufficiently served on the Landlord on December 10, 2021, in accordance with section 71 of the Act.

Tenant's counsel testified that he served evidence on the Landlord by mail on March 23, 2022, the day before the hearing. RC testified that the Landlords did not receive any evidence sent on behalf of the Tenant. As the Landlord was not served the Tenant's evidence in time to review and respond to it before the hearing, I will not be considering any of the Tenant's evidence in my decision.

Landlord RC testified he served responsive evidence on the Tenant by registered mail on March 9, 2021, and the Tenant confirmed she received it. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Preliminary Matter

Regarding the Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement, in the description of her claim, the Tenant submitted: "I want to have the eviction notice rescinded allowing me to stay in my apartment."

As the Tenant has already applied to dispute the One Month Notice, I dismiss the Tenant's application for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement.

Issues to be Decided

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

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began May 1, 2014; rent is \$928.72, due on the first of the month; and the Tenant paid a security deposit of \$387.50, which the Landlord still holds.

A copy of the One Month Notice was submitted as evidence. The Landlord testified they served the One Month Notice on the Tenant by posting it to the door on December 1, 2021, and the Tenant testified she received it the same day.

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 Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- the Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and
- put the Landlord's property at significant risk.

The Details of the Events section of the One Month Notice includes, regarding noise: "The tenant repeatedly loiters in front of the building screaming and yelling while her guests drink and smoke by the entrance. This goes on any where [sic] between 11:00-2:00AM weekdays and weekends," and "Multiple tenants [sic] have sent complaints and are at their wits [sic] end."

Landlord RC testified that the Tenant has been the subject of many noise complaints, many of which are verbal complaints, to the point where the number has "overwhelmed" the building manager. RC testified that management has discussed the issue with the Tenant "many times" and provided written warnings, but the problem persists.

Submitted as evidence is a warning letter from the Landlord to the Tenant, dated September 14, 2020, stating: "We received a few complaints regarding loud and disruptive noise emanating from your apartment and by occupants/guests of your apartment early this morning."

Submitted as evidence is an April 23, 2021 email from the Tenant to Landlord DC. In it, the Tenant refers to a guest of hers, and writes: "I am most appologetic [sic] to you, [the building manager] and my neighbours for the unfortunate peace disturbing turmoil [sic]."

Submitted as evidence is a letter, dated August 17, 2021, from Landlord RC to the Tenant. In it, RC writes: "I have received multiple complaints about you and your guests loitering in front of the building at 1:00AM on Monday. It was reported that they were drinking and smoking by the entrance."

Submitted as evidence is a letter dated December 1, 2021, which Landlord RC testified was served on the Tenant along with the One Month Notice. It includes: "We have received multiple noise complaints about your unit again. You and your guest were reported screaming and banging on the front door around 1:30AM November 29, 2021. Further to this, the police were called out due to a guest you let into the building. We have provided you countless warning letters, emails and verbal warnings about your excessive noise. Each time, there is a new excuse, and nothing has changed. As such, we will be proceeding with a **30-day eviction notice**."

The Tenant testified that on November 30/December 1, 2021 she was physically assaulted at the rental property by a former intimate, who is now under a no-contact order. When asked by counsel for the Tenant, Landlord RC confirmed that the November 29/30, 2021 incident alone would not have triggered an eviction notice.

Landlord RC referred to an undated letter he testified was received from another tenant in March 2022. The letter, submitted as evidence, includes: "On many occasions over the last few years, Tracy has just started screaming at the top of her lungs like she's screaming for her life, inside her apartment and out on her deck." RC testified that this is just one complaint letter, and that management receives "constant complaint letters" and even more verbal complaints. RC testified that the complaints include that other tenants cannot sleep due to the noise, and that the noise is not restricted to weekends, but also occurs during the week.

Landlord RC also provided testimony on the Tenant feeding wildlife from her balcony, attracting mice; the Tenant leaving a box spring in the hallway; and the Tenant letting non-residents into the building.

The Tenant testified that the building manager lived in the unit below her for more than a year, and never complained to the Tenant about noise.

Counsel for the Tenant submitted that most of the complaints from other tenants were made to the building manager, not present in the hearing, which prevented the Tenant from having the opportunity to question the building manager about the complaints.

The Tenant testified the Landlord is trying to get her out so they can renovate the unit and raise the rent.

The Tenant provided additional testimony regarding issues she has had with a contractor who does work on the property.

During her testimony, the Tenant stated she has severe post-traumatic stress, is brain injured, has cancer, and is dealing with the recent or expected death of three close family members.

Analysis

Based on the testimony of those present, I find the Landlord served the Tenant the One Month Notice on December 1, 2021, in accordance with section 88 of the Act, and that the Tenant received it on the same day.

As it is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reason for the notice, and is in the approved form, I find the One Month Notice meets the form and content requirements of section 52 of the Act.

As the One Month Notice was received by the Tenant on December 1, 2021, in accordance with section 47(4) of the Act, the deadline to dispute it was 10 days later: December 11, 2021. As the Tenant applied to dispute the One Month Notice on December 7, 2021, I find she applied within the deadline.

Section 47(1)(d)(i) of the Act states that a landlord may give notice to end the tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The Landlord has provided affirmed testimony and documentary evidence that beginning before September 2020, the Tenant has been the subject of many noise complaints from other tenants. The Landlord testified that management has raised the noise issue with the Tenant numerous times, both verbally and in writing, but that the Tenant continues to create noise disturbances.

Based on the Landlord's evidence, I find the Landlord is entitled to end the tenancy because the Landlord has demonstrated that the Tenant has consistently and unreasonably disturbed other occupants of the residential property. My decision gives no weight to the late-night noise resulting from the winter 2021 incident in which the Tenant was assaulted on the property.

As there is sufficient grounds to end the tenancy, it is unnecessary to consider the remaining reasons on the One Month Notice.

I find credible the Tenant's affirmed and undisputed claims that she has significant health challenges, was physically assaulted on the property, and is dealing with the deaths of three family members. In recognition of the Tenant's difficult circumstances, I am allowing the Tenant an additional month of tenancy and ordering the Tenant to vacate by 1:00 p.m. on April 30, 2022.

The Tenant must pay rent for April 2022 in accordance with the tenancy agreement.

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

Conclusion

The Tenant's application is dismissed. Pursuant to section 55(1) the Landlord is awarded an order of possession effective April 30, 2022 at 1:00 p.m. The order must be served on the Tenant and may be filed and enforced as an order of the Supreme Court of British Columbia.

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: March 28, 2022

Residential Tenancy Branch