



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1700 Pendrell Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, RS, Administrator, JS, Building Manager, MS, and the Tenants, AC and JC, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on November 8, 2021 by posting the notice on the Tenant's door. The Landlord also sent the One Month Notice by email. The Landlord sent their evidence by email on February 17, 2022. The Tenant confirmed they accept service by email. The Tenant also confirmed they received the One Month Notice and the evidence. I find that the One Month Notice was deemed served on the Tenant on November 11, 2021 according to Section 88(g) of the Act. I find the Landlord's evidence was deemed served on the Tenant on February 20, 2022 according to Sections 43(1) and 44 of the *Residential Tenancy Regulation* (the "Regulation").

The Tenant testified that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package on November 18, 2021 (the “NoDRP package”). The Tenant served their evidence on the Landlord by email on February 15, 2022. The Landlord confirmed that email is a permissible method to serve important documents to the Landlord. The Landlord confirmed receipt of the NoDRP package and evidence. The Landlord confirmed that service of the evidence on February 15, 2022, although late, was fine. I find that the Landlord was served with the NoDRP package on November 18, 2021 in accordance with Section 89(1)(a) of the Act. I find that the Tenant’s evidence was deemed served on the Landlord on February 18, 2022 in accordance with Sections 43(1) and 44 of the Regulation.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2021. The fixed term would end on June 30, 2022, then the tenancy would continue as a month-to-month tenancy. Monthly rent is \$3,995.00 payable on the first day of each month. A security deposit of \$1,997.50, and a pet damage deposit of \$1,997.50 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord stated on the One Month Notice the reasons why the Landlord was ending the tenancy was because 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, the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, and the Tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the Landlord gave written notice to

do so. The effective date of the One Month Notice was December 31, 2021. Further details of the events that are the cause to end this tenancy are:

The management team received multiple complaints from other tenants residing in the [name] building of loud music, dog barking, and loud talking on the balcony that persisted thereafter warnings were given. These noises were reportedly coming from Unit #[XXXX], where [the Tenant] resides on the following dates:

July 1st – Loud bass music past 10:00 pm

July 4th – Loud bass music past 10:00 pm

July 8th – Dog barking past 12:30 am

July 17th - Loud bass music past 10:00 pm

July 18th – Dog barking past 3:50 am

July 19th – Noise of talking on the balcony from 10:00 pm to 12:00 am

July 22nd – Dog barking past 12:30 am

October 16th – Dog barking past 11:13 am

November 7 – Party and Dog barking past 4 am

The Landlord testified that soon after the Tenant moved in, noise complaints began. The Landlord received formal complaints from two different tenants who live on the same floor as the Tenant about the loud music and the pets making noise.

Complainant #1 wrote the Landlord at 12:42 a.m. on July 8, 2021 stating, “*This is my fifth time reporting the noise from [Tenant’s suite #], three times to you, twice through the security on duty. I have been suffering from their loud music, past midnight talk on balcony, and continuous dog barking even the owner is at home since they moved into the unit.*” Complainant #1 wrote another complaint email on July 15, 2021 at 12:18 a.m.

Complainant #2 sent the Landlord an email on October 16, 2021 at 11:13 p.m. This complainant states,

“[house member] can’t sleep right now and it’s pretty late. The dogs have been barking for roughly 6 hours straight non stop.

They have been waking us up and disrupting [house member] home schooling.

I don’t complain every day and I honestly hate complaining at all.

*But it's a constant thing and I don't want to constantly bug you about it.
But it's really lowered our quality of life here."*

The Landlord provided a complaint from a third tenant on February 4, 2022 at 4:06 a.m. about the dogs non-stop barking. The Landlord provided additional complaints from complainant #2 which were dated February 12, 2022 at 4:59 a.m.

In the tenancy agreement, the Landlord states that the Tenant has breached Section 17-Conduct provision. The Landlord sent formal notices to the Tenant dated July 15, 2021, and July 22, 2021. The letters did not provide dates when the noise was expected to cease, but the Landlord testified that it was expected to end as soon as possible. The Tenant disputed both notices, but never received a response back on either of them. The One Month Notice was served on November 8, 2021.

The Landlord provided documentary evidence that they responded to the Tenant's concerns after the One Month Notice was served. The Landlord replied on November 15, 2021 that, *"We receive multiple complaints on a regular basis from your neighbours, and your neighbours have been affected to such a degree that some of them have considered moving. In situations such as these we need to take into consideration the well being of all effected parties."*

The Landlord testified that after a notice was issued to the Tenant there would be a quiet period. He stated they do not issue a notice after one complaint.

The Tenant stated that some of the complaints were not correct, meaning the noises were not coming from their rental unit. He testified that his dogs are always with him, even during the evening hours. The Tenant said that his wife went and spoke to one neighbour who they knew was the person who had complained, and his wife provided her cell number so that the person could call or text if noise from their unit was disturbing her. They have never received a call or text from that neighbour.

The Tenant testified that this is a pet friendly building and there are four units on his floor that have pets. He maintained that they do listen to music, but by 10 p.m. their sound system automatically shuts off.

Between the time October 28 to November 7, a leakage repair was being conducted in the Tenant's guest washroom ceiling. The ceiling was cut open and during that time the Tenant proposed that it was possible for sound to travel easily between their unit and

surrounding units. Again, on November 8, 2021, the Landlord served the One Month Notice.

The Tenant testified that they received a city bylaw warning letter. The Tenant feels emotionally harassed. The Tenant seeks to cancel the One Month Notice. The Landlord is seeking to end this tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(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*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

Residential Tenancy Policy Guideline #8 deals with material terms of tenancy agreements. It states that a material term is a term that the parties both agree is so

important that the most trivial breach of that term gives the other party the right to end the agreement. I must assess the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. To end a tenancy agreement for breach of a material term the Landlord must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and,*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

The Landlord submits that the Tenant has breached the Conduct provision in their tenancy agreement; however, the Landlord's notice practices do not follow the policy intent of the legislation. Policy Guideline #8's layout asks me to consider how the Landlord notified the Tenant about the breach of a material term. The steps above set out a clear pathway for my analysis. The Landlord has not expressly stated the Tenant has breached a material term, but they do allude that '*it's essential all residents respect the right of quiet enjoyment of their neighbours within the building.*' The Landlord also does not state that the problem must be fixed by a specified date. I do find though that the Landlord expects that the quiet enjoyment of all its tenants must be respected. I do not find that the Landlord has proven on a balance of probabilities that the Tenant has breached a material term of its tenancy agreement.

The Landlord provided email evidence from other occupants, early in the Tenant's residency in the building, that the Tenant has conducted themselves in a way that has interfered with or disturbed other occupants or the Landlord of the residential property. Keeping people up or waking people up in the early hours of the morning is not acceptable living conditions even in a multi-resident building. I put little weight on the Landlord's evidence from tenants about noise reported in February 2022 aside from the fact that the noise has continued, but I find the Landlord must prove cause before issuing a One Month Notice. The Section 17-Conduct provisions in the Landlord's tenancy agreement clearly set out that noise or behaviour that is disruptive in the building must not be made. I find that the Tenant has generated noise from his rental unit that has significantly interfered with or unreasonably disturbed other occupants and the Landlord, and I dismiss the Tenant's application to cancel the Landlord's One Month

Notice without leave to re-apply. I find on a balance of probabilities that the Landlord has proven cause prior to issuance of the One Month Notice, and I uphold the notice.

As the Tenant failed in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

Order of possession for the landlord

- 55** (1) *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*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the One Month Notice submitted into documentary evidence complies with the form and content requirements of Section 52 of the Act. Based on the testimonies of both parties, I uphold the Landlord's One Month Notice and I grant the Landlord an Order of Possession that will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: March 09, 2022

Residential Tenancy Branch