



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Preliminary Issue: Service of 1 Month Notice

Both parties confirmed that the landlord had served the tenant with the 1 Month Notice dated October 9, 2021 by way of email. The landlord testified that they had communicated with the tenant through that method in the past.

The tenant testified that although they may have used email to communicate in the past, the tenant has not provided authorization to the landlord to use email as a method of service for documents in accordance with section 88 of the *Act*.

Section 88 of the Act establishes the requirements for service of documents.

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service prescribed in the regulations.*

Section 43 of the Residential Tenancy Regulation states the following:

Other means of giving or serving documents

43 (1) For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

(2) For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

(3) For the purposes of section 89 (2) (f) of the Act, the documents described in section 89 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

[en. B.C. Reg. 42/2021, App. 2.]

In this case, although I understand the landlord's reasoning behind why they had thought that the tenant could be served by way of email, the Residential Tenancy Regulation clearly states that the email address must be provided by the recipient as an address for service by the person. In this case, although the parties may have communicated through this method in the past, and to discuss matters related to the tenancy, I am not satisfied that the tenant had clearly stipulated that this email may be used as an address for service.

I am not satisfied that the landlord provided sufficient evidence to support that the tenant was served with the 1 Month Notice in accordance with the *Act*. On this basis, the 1 Month Notice dated October 9, 2021 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

Issues(s) to be Decided

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on March 1, 2021, with monthly rent currently set at \$1,250.00, payable on the first of the month. The landlord had collected a security deposit of \$625.00, which the landlord still holds.

The tenant testified in the hearing that they wanted the landlord to comply with “all the sections of the Act”. When the tenant was asked to clarify which specific sections the landlord has contravened, the tenant testified that the landlord has disregarded the tenant’s right to quiet enjoyment of the rental unit.

The tenant testified that there were several factors contributing to audible noise from the tenant’s rental unit, which the tenant feels the landlord has an obligation to address. The tenant testified that the heater causes a significant amount of noise, and may require repairs. The tenant also testified that the landlord keeps their family pet, a dog, in a cage in the bathroom, which the tenant could hear from their suite.

The tenant testified that they are often awoken late at night by the noises they hear, but which were less audible during the day. The tenant submitted audio recordings of the noise, which the tenant feels is an unacceptable level, and has significantly impacted the tenant’s ability to sleep and enjoy the home.

The tenant called a witness, who is a friend of the tenant’s, and participates in frequent video conferencing calls with the tenant. The witness testified that she can hear the noises when participating in these video calls, which often take place later in the evening.

The landlord does not dispute that some noise may be heard, but that the noise is within the acceptable level of noise considering the construction and layout of the home. The landlord testified that they had already made as many adjustments as they could to mitigate the noise, but the tenant remains unhappy. The landlord testified that they have had to adjust their daily lives to the extent that the family cannot enjoy their home as the home was intended to be used, such as using the office, or powder room, or even drinking water later in the evening for fear that they would upset the tenant.

The landlord testified that the heater is functioning properly, and the noises the tenant is complaining about are regular household noises. The landlord testified that they have never intentionally disturbed the tenant, and that previous tenants have never complained. The landlord admitted that their dog did suffer from the occasional illness, which may have caused the tenant to be disturbed, but that this was not a regular occurrence. The landlord testified that they have exhausted all the options as to how to

deal with the tenant's complaints, and that the tenant will never be happy regardless of what is done.

Analysis

Section 28 of the Act addresses the tenant's right to quiet enjoyment:

Protection of tenant's right to quiet enjoyment

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

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony and evidentiary materials submitted by both parties. The tenant has provided evidence and testimony about how she has been disturbed by the actions of the landlord and their family, who reside in the other portions of the home. The landlord disputes that these disturbances are unreasonable, and responded that they have attempted to address the issue to the extent that they can no longer enjoy their home.

The tenant called a witness in the hearing, who testified that the noises could be heard from the witness' end of the video call. The landlord testified that there are many factors that could distort this perception, and that this evidence cannot be relied on. In consideration of the fact that a teleconference or video call is subject to many possible distortions, I am not satisfied that this evidence can be considered sufficient to support that the noise heard by the witness is caused by the landlord, and if so that this noise is of an unacceptable level.

Furthermore, I find that the landlord had taken multiple steps to address the tenant's complaints, from avoidance of certain areas of their own home, to changing their behaviour such as not drinking water in the evening. I find the level of accommodation exceeds the landlord's obligations considering the fact that the level of quiet enjoyment could very well be impacted by the nature of the living space and construction of the home. Although the location of the tenant's rental unit may minimize the transfer of noise from the landlord's portion of the home to the tenant's, I am not convinced that the landlord can do more to reduce the disturbances described by the tenant short of vacating their home. I find much of the described disturbances arise out of the day-to-day functions of a regular household, which the landlord has already attempted to

address. Although the tenant suspects that the heating system requires repairs, I find that the landlord has provided a reasonable explanation for why the sounds occur. I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to perform necessary repairs, and which would impact the tenant. Similarly, I find that the landlord does have a dog, whose sounds may be heard by the tenant. I accept the testimony of the landlord that the landlords and their dog have not been engaging in an unusual behaviour that would be considered more than day-to-day functions of a household with a pet. Although I am sympathetic towards the tenant's situation, and although I do not disbelieve that the tenant struggles to cope with the current conditions as a tenant, I find that the evidence does not support that the landlord has failed in their obligations in dealing with this matter.

In light of the testimony and evidence before me, I do not find that the landlord has intentionally or unreasonably disturbed the tenant. I accept the testimony of the landlord that the landlord and their family have been unable to perform normal tasks such as flushing the toilet, drinking water, or using certain parts of the home in order to address the tenant's complaints. I do not find the level of disturbance described by the tenant to be unreasonable. Accordingly, I dismiss the tenant's application for any orders.

As the tenant was only partially successful in their claims, I allow the tenant to recover half of the filing fee.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The Landlord's 2 Month Notice, dated October 9, 2021, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to recover half of the filing fee. I allow the tenant to implement a monetary award of \$50.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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 02, 2022