



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, DRI

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on December 14, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and to dispute a rent increase. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 17, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matter – disclosure

Both parties attended the hearing. The Landlord confirmed they received the prepared evidence from the Tenant. On my request, the Landlord provided sent email proof they provided their evidence to the Tenant. I have reviewed the email confirmation and find that to be the case; therefore, both parties’ evidence receives my full consideration herein.

Preliminary Matter – unrelated issue

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice issued by the Landlord on December 6, 2021. I dismiss the Tenant's dispute of a rent increase, with leave to reapply.

Issues to be Decided

Is the Tenant entitled to an order to cancel the One Month Notice pursuant to s. 47 of the *Act*?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Background and Evidence

Though neither party submitted a copy of a tenancy agreement document in their evidence, I reviewed the basic terms of the tenancy with the parties in the hearing. The Tenant stated there was never any document of the agreement, while the Landlord stated there was. The agreement started on April 15, 2019, with the Landlord and their two family members as the original occupants. The rent was \$2,000 per month; however, starting on September 15, 2021 the Tenant started paying \$100 more per month.

The Tenant mentioned other occupants in the residential unit. For one, a family member's spouse moved into the area and stayed less than one year before moving out; this was approximately March 2020 to October 2020. Their own acquaintance "came and went", moving into the rental unit in May 2020 and moving out in December 2021. Another family member of the Tenant came to visit, with their child, at the end of July 2021 and currently still resides in the rental unit. This family member has applied for housing and "that takes awhile."

At the conclusion of the hearing the Landlord provided a copy of the One-Month Notice on my request. This shows the Landlord signed the document on December 6, 2021, for the move-out date of January 15, 2022. The Landlord did not indicate on page 3

how they served this document to the Tenant; however, on the Application the Tenant indicated the Landlord served it to them in person, and they verified this in the hearing.

On page 2 of the document, the landlord provided the reasons for giving the notice:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

On page 3 the referred to the “Landlord’s Notice of Termination”, included in their evidence attached to the One-Month Notice. This states, “The lease is being terminated because you have violated the lease agreement.” Additionally;

As per the agreement, only three people including the tenant . . . [and their two family members] will live in the above rental unit. However, the tenant has allowed an unreasonable number of occupants in the unit, and this significantly disturbs other tenants. I have discussed this problem with the tenant so many times, but the tenant has repeatedly violated the agreement. Due to such a problem, the other tenants called the police several times.

The Landlord provided more detail on these grounds in the hearing.

When the tenancy started, there was only the Tenant and two of their family members. After awhile, a friend of the Tenant moved in, and the Tenant “didn’t say anything”, but all utility costs started to increase. Then another family member moved in. The Landlord informed the Tenant that rent was increasing. According to the Landlord, the Tenant agreed to the rent increase which ostensibly was because of the increase in utility amounts.

The only addition to the history of rental unit occupants – as set out above – is that the Tenant had one family member leave in 2020. The Tenant, in response to the Landlord’s charges, noted that parties had left. Also, they stated in the hearing that “not all people are there at the same time.” There was only an increased number of occupants (5 in total) for a few months in the past when the family member’s spouse moved in, and the Tenant’s own friend also moved in.

The second ground chosen by the Landlord is that of significant interference and/or unreasonable disturbance. From the Landlord’s perspective this comes with the

increase of occupants in the rental unit. The source of complaints to the Landlord about noise are the property residents who live below the Tenant, and the next-door neighbours. The residents below are older, and they made calls to police for noise complaints. This has continued for over one year.

In their written description of the issue, the Landlord set out that the Tenant's friend threatened the other residents. The Landlord provided written statements of the downstairs residents. One of them described "thumping footsteps and banging around [that] would continue every night until after 0200 AM or later." They attempted to speak to the Tenant about these issues, but this resulted in "excuses and threats." Another occupant in the rental was a "huge party person". Another issue was the young child living in the rental unit. One of the residents below also described the issue affecting garbage and their ability to dispose of their own garbage; as well, this affected utility usage at the property.

The other downstairs resident provided a lengthy account covering the situation in detail. This was a description of events for the last 3 years from their perspective. This included specific information on large gatherings hosted by the Tenant, visits from the police, "severe usage" of utilities met with "a lot of excuses". This impacted the level of heat in the own lower portion due to the Tenant "changing [the] thermostat constantly". Also, the air quality in their own unit is affected with the smoking from upper-level occupants and/or guests. Finally, as of 2022, "the house [became] a play school for kids."

To counter this information, the Tenant presented that the downstairs residents are the source of the complaints, with the problem being the Landlord's own younger family members who are children. The Tenant submitted audio of their conversations with the Landlord wherein they described the downstairs residents as "abusive". The Tenant gave one example of the downstairs resident banging on the ceiling due to a dropped juice box which was an accident. In the hearing they described the resident below threatening the children who were staying in their rental unit; however, they did not call the police because of this.

The Tenant also presented recorded phone calls they had with one of the residents below. The Tenant did not identify that they had that person's consent to record the telephone call. That resident described the impact the events and Tenant/guest/other occupant behaviour were having on the other resident below. These phone calls have one of the downstairs residents disclosing deeply personal matters about the other. This is the source of extended complaints from the one resident who is not in direct

communication with the Tenant in the rental unit. In one call the Tenant is heard apologizing for the noise and the resident on the call is expressing their confusion about the situation.

The Tenant also recorded calls they had with the Landlord where the Landlord is informing them of the noise situation, and the impact overall of other occupants living in the rental unit.

Analysis

The *Act* s. 47(1) sets out each subsection that the Landlord indicated on the One-Month Notice as reasons for ending the tenancy.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord spoke to the reasons in oral testimony and provided two written accounts from the downstairs residents.

I find the two accounts written by each downstairs resident is insurmountable in their totality about the tenancy, and the ongoing conduct of the Tenant's family members and guests. I find this constitutes adequate evidence to end the tenancy given the frequency and severity of the level of noise involved as well as other disturbances. This involves higher costs overall to the residents downstairs on utilities, and definite interference with the Landlord who is having to deal with the situation, ongoing, chiefly due to all the other individuals the Tenant here is allowing to stay or taking on as occupants who were not originally a party to the agreement.

I find the number of people staying in the rental unit is not unreasonable. It is not a capacity that exceeds the space available in the rental unit; however, the other occupants who are staying in the rental unit are causing trouble for the residents below, to an extreme degree.

I find the phone calls between the Tenant and one of the residents, though seemingly an open channel of communication, reveal the impact the living situation is having on the other resident who was not on the call. If the Tenant wishes to paint that other resident as the instigator who was making threats and causing disturbance, the evidence does not show that. The written accounts of these two occupants outweigh any testimony or other evidence presented by the Tenant, who was entirely in defensive

mode, and did not concede that their family members' visits and stays are causing a large amount of difficulty.

I am satisfied of the severity of the noise and the impact it is having on the residents in place. The extra occupants in the rental unit are increasing costs overall but more importantly causing disturbance and interference to them. This is unreasonable in its impact and there was no evidence from the Tenant that they were taking steps to rectify the situation or make other adjustments to ensure a peaceful tenancy going forward.

The Tenant also provided recordings of phone conversations they had with the Landlord. Understandably, the Landlord was concerned in the hearing about the violation of their confidence on these calls. I fully agree that the Tenant is not in a position to record calls without the other party's consent. I find the Landlord was not contradicting any information they provided in their calls; therefore, I find the calls recorded with the Landlord did not help the Tenant in any way. In fact, it shows the Landlord gave the Tenant ample warning and time to correct the situation.

In line with s. 47, I find the Tenant's actions, and those of persons permitted on the property by the Tenant, were those which "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property." The Landlord has provided sufficient evidence of the Tenant's conduct and interactions with other residents that causes legitimate concern.

I find the One-Month Notice issued by the landlord on December 6, 2021 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* section 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession.

Conclusion

Under s. 55(1) and s. 55(3) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be 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 s. 9.1(1) of the *Act*.

Dated: March 18, 2022

Residential Tenancy Branch