



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brookside Residence Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNC
For the landlord: OPC, FF

Introduction

This hearing reconvened to deal with the parties' respective applications for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied on December 3, 2021 for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord.

The landlord applied on December 7, 2021 for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant; and
- to recover the cost of the filing fee.

The hearing began on March 21, 2022, and was adjourned due to time limitation issues. An Interim Decision was issued on March 22, 2022, which should be read in conjunction with this Decision and is incorporated by reference herein. This hearing was 70 minutes in length.

At the reconvened hearing, the tenant, the tenant's advocate (advocate), the landlord, the landlord's agent/building manager, and the landlord's witness attended. The hearing lasted 56 minutes.

The witness was affirmed and excused from the hearing until her testimony was needed. The hearing process was explained to the remaining parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited. All parties provided affirmed testimony they were not recording the hearing.

The parties confirmed receiving the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice?

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession of the rental unit pursuant to the Notice and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed in evidence by the landlord shows a tenancy start date of April 1, 2020, on a month-to-month basis, monthly rent of \$1,100 due on the first day of the month, and a security deposit of \$550 being paid by the tenant.

The landlord issued the tenant a 1 Month Notices, which is the subject of this dispute.

Both parties provided a copy of the Notice, which shows that it was dated November 23, 2021, for an effective date of December 31, 2021. The Notice was served to the tenant by registered mail and the tenant confirmed receipt of the registered mail on November 26, 2021. The tenant's application was filed on November 30, 2021, and completed on December 3, 2021, within the required timeline under the Act.

The 4 causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
4. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The "Details of Cause" section listed on the 1 Month Notice states as follows:

*Tenant (*name*) has a history of verbally being aggressive towards fellow tenants, building management staff and building owner. Following an incident, a letter documenting that this type of behaviour is unacceptable was served to the tenant on September 7, 2021. Unfortunately this type of behaviour has continued and is the reason for this notice. On November 11, 7:30 PM the tenant aggressively accosted the two tile installers (*installers' name*) that were working in the building's lobby demanding that they stop their work. Despite being asked politely to walk around the freshly installed tiles, she willfully stepped on them to*

sabotage their work and bully them into stopping by threatening to destroy more. On November 14, 7:30 pm the same scenario is repeated. This time the tenant is stomping on freshly installed tiles to vandalize them and shouting to the installers: "I said STOP! I will stop when you stop!" On monday November 15th, 8 pm, the tenant started again with some aggressive verbal intimidation and this time the installers just left.

[Reproduced as written except for anonymizing personal information to protect privacy]

In support of their Notice, the landlord provided the following evidence –

The owner said he purchased the building in April 2020, and had two previous “run-ins” with the tenant. Then, in August 2021, there was a run-in between the tenant with the property management. The landlord testified that the tenant’s behaviour was rude and aggressive, which prompted a letter to be issued to the tenant about that behaviour.

In the written statement of events, the landlord wrote explaining further that there was an incident on August 29, 2021, between the tenant and the building manager, SB. The interaction included rude and aggressive behaviour, toward SB, complaining about the tenant living below her, according to the landlord.

The landlord submitted that the tenant had been complaining about the noise from the air conditioning in the rental unit below hers, and the tenant’s confrontation with the lower tenant making the lower tenant feel ambushed and bullied after the interaction with the tenant. The landlord submitted that they sent the tenant a letter on September 7, 2021, regarding the matter, which was filed in evidence.

The landlord submitted that they sent a letter to the lower tenant on September 13, 2021, addressing her concerns that she was made to feel fearful of losing her apartment and wished to have no further dealings with the tenant. Filed in evidence was a copy of the letter.

The landlord submitted statements surrounding the incidents of November 6, 11, 14, and 15, 2021. The landlord wrote that tiles in the building’s basement, front entrance/lobby and back entrance were replaced for safety reasons, as the new tiles were anti-slip. The tenants in the building were given notices of the work on the tiles. The landlord submitted that they hired a reputable local flooring company to do the work.

The landlord wrote that on November 6, 2021, the “tile removal work started at 9:30am and despite having posted prior notice informing all tenants of the removal work, within 10 minutes of work commencing, (tenant) came down to the lobby and approached” SB. “With her hands on her hips she demanded how long this would go on for and when exactly it would stop”. According to the landlord, SB told the tenant there were 6 people working on the project in order to complete it as quickly as possible.

Then, according to the landlord’s written submissions, on November 11, 14, and 15, 2021, as the new tiles are being installed in the lobby, the tenant went to the lobby and demanded that the tile installers stop their work. The landlord submitted that the tenant deliberately walked over the freshly installed tiles despite being asked by the tilers to walk around on a section that had dried. The landlord referred to the statements from the tile installers, alleging “destruction of property AND severe bullying/intimidation.”

The landlord asserted that after the tenant telling the tile installers she was going to report them, a city inspector attended the next day to conduct a site visit, who in turn, confirmed there were no infractions.

The landlord asserted that of the total of 43 tenants in the building, “the majority were extremely appreciative and complimented the workers on the hard work and the improvements. No other complaints were received during the existing tile removal or new tile installation time”.

The landlord submitted that on November 11, 2021, the tenant reported an urgent issue with respect to a repair of her shower as it was making noise. On November 12, 2021, according to the landlord, the tenant phoned the emergency line and talked to the landlord directly. At no time, did the tenant talk to the landlord or SB, who made the repair, about the tile installation issue, even though the incident occurred the previous night. The landlord asserted this shows the tenant takes things into her own hands about issues around the residential property, instead of going through the proper channels.

Testimony of SB –

SB said he has managed the property for 20 years and that the situation with another tenant in the rental unit on the floor below the tenant told him the type of person the tenant was. SB said that the whole building knew that there was a personal situation

with another tenant who had been sitting in her own feces in their rental unit, experiencing a personal crisis, and that he was up to his elbows in the other tenant's feces. SB said he had never experienced anything like that and was doing his best to take care of that situation, clean up, while respecting the tenant who was having the personal crisis.

SB explained that while he was in the other tenant's rental unit, trying to clean up the mess and make the situation good for all tenants, the tenant specifically ran up to him to speak to him about the air conditioning. The tenant also asked SB why he did not do anything about the smell coming from that rental unit, while he was shoveling feces trying to clean up.

SB said the weather was extremely hot and everyone was under stress. SB said he had never seen anything like what was in that other tenant's apartment that day.

As to the matter of the air conditioning noise, SB said that the lower tenant's apartment, which is the one directly below the tenant's rental unit, was a high efficiency unit. SB said they were trying to do everything possible to reduce the noise, but the air conditioning unit was running as it was intended.

As to the tile installation issues, SB said that jackhammering began on November 6, 2021, and that all tenants were notified by letter on November 3, 2021.

SB said that the landlord has made significant improvements in the building since taking ownership and that the tiling was a problem. SB said that out of the 43 tenants, they received only one complaint, which was from the tenant.

SB said that he understood the tile installation was an inconvenience to the tenants in the building, but that the work only took a few days. SB said that they tried to do everything to minimize the inconvenience.

SB said that the work first started on November 6, 2021, at 9:30 am, and the tenant quickly approached, with hands on her hips, demanding to know how long the work was going to take.

SB said the tenants were not denied access to any of the building considered common areas.

SB said that in 20 years of property management, he has never encountered someone like the tenant.

Landlord's additional documentary and photographic evidence –

Filed in evidence was an affidavit from SB. Attached to the affidavit was a written statement from one of the tilers, WP, which was endorsed by another tiler.

The written statement described that on November 11, 2021, at approximately 7:30 pm, the tenant came to the lobby while they were working “aggressively demanding that we stop because it was too noisy”. Thereafter, according to the letter, the tenant walked to the library on the freshly installed tile, despite there being an available path to that room and the tilers requesting that she not. On the return trip, the tenant walked again on the freshly installed tile, ruining the installation.

The tiler's letter stated that on November 14, 2021, around the same time, the same scenario was repeated, as the tenant stomped on the freshly installed tile. Despite their request to stop ruining the installation job, the tenant continued to stomp on the freshly installed tile.

The tiler's letter stated that on November 14, 2022, the tenant again came to the lobby between 7:30 and 8:00 pm, with the “same level of aggression”. As the tilers had finished all but the tile baseboards, the tenant said she would then report them to the city. A city inspector came the next day and said he was investigating a report of “shady construction”.

Additional evidence was a letter to the tenant, a letter to the tenant living below the tenant, letters to the residents of the building about the tile installation, which included jackhammer noise, pictures of the tile work with signage, a picture of the landlord's wife vacuuming the floor after the jackhammering, and a jackhammer invoice.

Tenant's response –

The tenant testified that she went to the lobby on November 14, 2021 at 9:30 pm and at 8:30 pm on November 15, 2021, not the times listed in the letter.

The tenant said she was not permitted relaxation in her suite, particularly when the jackhammer started. The tenant said she was not given notice of any noise, and that on

November 14th, at 9:30 pm, the tile installers were still working on their own to finish after hours. The tenant testified she stood at the doorway and waited for the tilers to notice her and told the tilers she wanted to sleep, as it was 9:30 pm.

The tenant said the tilers' attitude was belligerent and rude and this was partially witnessed by another tenant. According to the tenant, the other tenant said she had a right to say something. No witness statement was provided.

The tenant testified that on November 6, 2021, the jackhammering noise continued through 9:30 pm, and wanted to know why it was such an issue that she wanted to know how long the jackhammering job would take.

The tenant said that by Tuesday, she called by-law, and was informed that quiet hours began after 9:00 pm. The tenant submitted that there were no notices placed in the building about continuous construction. The tenant submitted that when she saw the landlord, he looked angry.

The tenant denied asking the lower tenant to turn off her air conditioner and was never aggressive to the lower tenant. The tenant said that she only asked the lower tenant if it was possible to let her air conditioner run so that it would not turn off and on.

Filed in evidence by the tenant were her two affidavits.

In the first affidavit, the tenant writes that the jackhammering below her rental unit continued to 9:30 pm, at which time she wanted to go to bed. The tenant said that she did not note the date.

The tenant wrote that at that time she went downstairs and the two workers continued working. Because the two workers did not notice her, she had to raise her voice and shout over the noise. The tenant admitted being frustrated as the workers were taking advantage of after hours to catch up on their work.

The tenant wrote that she "told the workers to stop because I needed to sleep". The tenant wrote that the worker started berating her for standing on a tile which he said was wet. The tenant wrote that there were no signs indicating where to stand or what areas were wet and there was "no place else to stand to talk to him". In the previous days, there was little to no indication where not to stand.

The tenant wrote that the worker had a belligerent attitude towards me, and she told him, "I will stop standing there as soon as they are quiet".

The tenant wrote that the workers left the building. The next night, the renovations started up again and she went downstairs to ask the same request.

In her second affidavit, the tenant wrote that sometime in the summer of 2021, she asked the landlord about a noise which ran 10 minutes and then was off 10 minutes, which she heard in her bedroom while trying to sleep. The tenant wrote she and the landlord agreed that she "would graciously inquire with the tenant" above and below her to get an understanding what was causing the noise.

The tenant wrote that she met the tenant living below her and explained her situation. The tenant below said she had a temperature timer on her air conditioner. The tenant wrote that she asked the tenant below if she would let her air condition run consistently instead of having it stop and start periodically, "which woke me up constantly". The tenant denied telling the lower tenant to turn off her air conditioner, "but I was curious why it was necessary at that time when the temperature was much cooler". "My only request was to leave it on".

The tenant wrote that she ran into the lower tenant sometime afterwards, who said SB had spoken to her after she, the tenant, left a phone message with SB. The tenant said the lower tenant became "emotional and visibly upset, she was saying that she didn't want to be evicted". The tenant wrote that she tried to reassure the lower tenant several times she would not be evicted, and although the lower tenant said that, "it was her perception of the conversation for some reason. This tenant was so upset I thought she was going to cry, but she turned and went back into the building".

Advocate's submissions –

The advocate said the landlord has not provided evidence of written complaints, there was no illegal activity, and that there is no proof the tenant asked the City about quiet time.

The advocate questioned whether WP's written statement was from a professional translator, as WP is from another country and the language in the letter would not be how the tiler would write.

The advocate said that tenants are allowed to make complaints. The advocate submitted there was no evidence of damage to the tiles made by the tenant.

At my request, the landlord's spouse attended the reconvened hearing to provide testimony, as referenced in the Interim Decision.

Landlord's witness –

The witness spoke about the incident with another tenant living on the first floor, when that tenant was lying in her own excrement. The witness said that she overheard the tenant speaking to SB when she, the witness, was in the other rental unit assisting in the cleaning. The witness said the condition of the rental unit was so bad that social workers would not come into the rental unit. The witness said she had to wear a mask and gloves while cleaning.

The witness said that she overheard the tenant complaining to another tenant about the smell. The witness said the tenant wanted to speak to SB, who said he would try to find a resolution, and heard the tenant say, "she could make noise as well".

The witness said she was part of the work crew regarding the tile work, to speed things up for the benefit of the tenants.

Landlord's rebuttal –

The landlord said the reason WP was not present for the hearing is that his father who lived in another country had died.

The landlord submitted that the tenant cannot interfere with a landlord's right to maintain and repair the residential property.

SB's rebuttal –

SB said he was in the tenant's suite the next day after the incidents with the noise, and yet the tenant did not speak to him about the noise.

The advocate's surrebuttal –

The advocate said communication in a certain way is not grounds for eviction.

The tenant's surrebuttal –

WP spoke broken English and could not write that affidavit.

Analysis

I have carefully reviewed and considered the relevant oral and written evidence submitted by the parties.

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. Where a tenant applies to dispute a 1 Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice in this dispute was issued under sections 47(1)(d)(i) and (ii), (e)(ii) and (iii) of the Act. Having reviewed a copy of the Notice, I find it was on the RTB approved form with content meeting the statutory requirements under section 52 of the Act.

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

At most, one version of events can be true. In weighing the evidence, I must determine the credibility of the witnesses. The often cited test of credibility is set out in *Faryna v Chorny*, [1952] 2 DLR 354 (BCCA) at 357:

The real test of the truth of the story of a witness... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

In her testimony, the tenant stated that the jackhammering occurred through 9:30 pm on November 6, 2021. The landlord submitted documentary evidence, a detailed receipt, that the jackhammer was rented on November 6, 2021, at 9:12 am and returned at 7:21

pm, on November 6, 2021. This did not account for the time spent in loading the jackhammer, driving to the rental store, and checking-in the jackhammer.

Additionally, the landlord submitted a photograph of the dust and dirt from the jackhammer being vacuumed at 3:26 pm on November 6, 2021.

For these reasons, I find the tenant's evidence contradictory and inconsistent, as I find the landlord submitted sufficient evidence the jackhammering stopped hours before 9:30 pm, as asserted by the tenant. I therefore find the tenant's evidence is not credible or reliable.

The landlord and agent asserted that the tenant has interfered with the landlord's renovations and repairs, and made it difficult for their contractors to do their work without the tenant's interference. The landlord and agent, as well as the tiler in a written statement, said that the tenant confronted the tilers multiple times while working and damaged the freshly installed tiles by stomping on them multiple evenings. The tiler wrote the tenant said she would stop stomping on the tiles if they would stop working on the tiles. The tiler wrote that they had to fix and reposition the tiles each time the tenant walked all over them, although there was a clear path for her to walk on.

While the tenant and advocate question whether WP could write such a statement as he was from another country, the tenant presented no evidence that this was the case.

The tenant even admitted in her affidavit that she went downstairs and took it upon herself to confront the tilers, and that she raised her voice. The tenant admitted to telling the landlord's contractors to stop working and that she went down to where the tilers were working to address her complaints herself. I find this behaviour unreasonable. I find the tenant's own statements therefore confirm that she interfered with the landlord's lawful right to repair and maintain the residential property. The landlord is obligated under section 32 of the Act to provide and maintain the residential property in a state of decoration and repair complying with housing standards.

I find it is not upon tenants to interfere with the landlord's contractors or any work being done around the property. If the tenant has issues or complaints, the tenant ought to have notified the landlord or SB, not confront the landlord's contractors and demand they stop working. I find the tenant had no right to make this demand and the landlord and SB provided consistent evidence that the tenant never made a complaint about the tiler's noise.

I also find the statements of the tiler that the tenant stomped on the freshly installed tiles to the point of damaging them and causing the tilers to reposition them had the ring of truth. The tenant admitted to at least walking on them and that she was frustrated and annoyed. However, as I have found that the tenant's evidence is not credible or reliable, I accept that the tenant stomped on the freshly laid tiles, causing damage.

I therefore find the landlord submitted sufficient evidence on a balance of probabilities that that the tenant seriously jeopardized the lawful right or interest of the landlord.

As to the issue pertaining to the tenant living below the tenant's unit, I find the tenant had no right to ask the lower tenant to alter the way she used her air conditioning unit. In her affidavit, the tenant denied being aggressive to the lower tenant on one hand, and on the other hand, said the lower tenant became emotional and visibly upset the next time she came upon the lower tenant. I find it does not make sense that the lower tenant would become emotional and visibly upset when she came upon the tenant or to worry about an eviction absent any reason.

I find it is the landlord's responsibility to take up any complaints or concerns tenants may have with other tenants, and to not interfere with other tenants' rights.

As I have found the tenant's evidence is not credible or reliable, I accept the landlord's evidence that the lower tenant felt "ambushed and intimidated" by the tenant, to the point she worried that she would be evicted.

I therefore find the landlord submitted sufficient evidence on a balance of probabilities that that the tenant significantly interfered with or unreasonably disturbed another occupant.

Based on the totality of the evidence before me, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenant seriously jeopardized the lawful right or interest of the landlord and that the tenant has unreasonably disturbed another occupant and seriously jeopardized the health, safety, and lawful right of another occupant.

As I have found the landlord submitted sufficient evidence to support two of the causes listed on the Notice, I find it was not necessary to consider the other causes. However, I find that the landlord has not submitted evidence of illegal activity from the tenant.

For these reasons, I **dismiss** the tenant's application requesting cancellation of the Notice, without leave to reapply, as I find the 1 Month Notice dated November 23, 2021 valid, substantiated by the landlord's evidence, and consequently, enforceable. I therefore uphold the Notice and I **order** the tenancy ended on the effective date of that Notice, or December 31, 2021.

Pursuant to section 55(1)(b) of the Act, I grant the landlord an order of possession of the rental unit (Order), effective **two (2) days after service on the tenant**.

Should the tenant fail to vacate the rental unit pursuant to the terms of the Order after it has been served upon her, this Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff costs**, are recoverable from the tenant.

As I have dismissed the tenant's application, without leave to reapply, I find the landlord's application is successful and grant the landlord recovery of the filing fee of \$100.

I grant the landlord a monetary order in the amount of \$100. The landlord may choose to redeem this monetary award by deducting \$100 from the tenant's security deposit of \$550. In that event, the monetary order is cancelled and of no force or effect.

Conclusion

The tenant's application is **dismissed without leave to reapply**. The landlord has met the statutory requirements to end the tenancy and is granted an order of possession of the rental unit, effective **two (2) days** after service on the tenant.

The landlord's application is successful, and they have been granted a monetary order of \$100 for recovery of the filing fee. The landlord may satisfy this monetary award by deducting \$100 from the tenant's security deposit of \$550.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 28, 2022

Residential Tenancy Branch