



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 311 ASH PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord gave the following testimony. The tenancy began on July 1, 2011 with the rent of \$968.57 due on the first of each month. The landlord issued a One Month Notice to End Tenancy for Cause on December 31, 2021, for the following reasons:

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

LB testified that the tenant continually disturbs her at all hours of the night with his banging on the walls, yelling, screaming and loud music. LB testified that the tenant has been doing this for many years and despite numerous requests for him to stop, his behaviour has not changed. LB testified that it has had a negative impact on her sleep and her health.

MC testified that he has been managing the building for four years and that the tenant has been problematic during that entire time. MC testified that he has received so many verbal and written complaints that it affects his workload. MC testified that it is very stressful being contacted at all hours of the night about complaints about the tenant and having the police attending on several occasions.

JR testified that the tenant makes loud quacking noises and howls like a wolf at all hours of the night. JR testified that he has a serious heart condition and that all the

stress of having his quiet enjoyment disturbed is a trigger for his condition to worsen. JR testified that the matter really escalated on December 30, 2021 when the tenant's behaviour was so unacceptable that the police attended and took him away. JR testified that the tenant treated his own mother who is also a tenant in the building, so badly she was reduced to tears.

Counsel submits that despite the landlords' best efforts, the tenant has had a long and consistent pattern of disturbing numerous tenants with loud noise, yelling, and music which in turn results in numerous complaints that the landlord must address and affects his business. Counsel submits that an order of possession is appropriate under these circumstances.

The tenant gave the following testimony. The tenant testified that he was just drinking and listening to music on December 30, 2021 and enjoying his Christmas break. The tenant testified that if the other tenants had called the police earlier in the evening things wouldn't have gotten so out of hand. The tenant testified that he is sorry about all the trouble that he has caused and apologizes to the landlord. The tenant testified that he is under a lot of stress as he is taking care of his mother that is dying of cancer. The tenant testified that he is also an actor and singer for children and practices his animal sounds. The tenant testified that he wants to live close to his mother and asks that the tenancy continue.

Analysis

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. MC, JR, and LB were all very clear, concise and compelling when providing testimony. They each described how the tenants' actions have impacted them in different ways but, all of it was negative. JR and LB provided details on how it has impacted their health, sleep, and happiness in the building. MC described how it affected his workday and how much time has been devoted to this tenant in a consistent and recurring pattern of bad behaviour, with no improvement.

When the tenant was given an opportunity to address the allegations, he spent the majority of it diverting blame to others and questioning why they didn't call the police sooner to help mitigate his poor behaviour. Based on the testimony of the witnesses, the extensive documentation before me, I find that the landlord has provided sufficient evidence to support the issuance of the notice on both grounds; accordingly; I find that this tenancy must end. The notice is confirmed, it is of full effect and force.

Section 55 of the *Act* reads in part as follows:

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 landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. The 1 Month Notice dated December 31, 2021 is of full effect and force. I dismiss the tenant's application to cancel the 1 Month Notice and issue the landlord an Order of Possession in accordance with section 55(1) of the *Act*.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order 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: April 07, 2022

Residential Tenancy Branch