



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On January 26, 2022, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated January 25, 2022 (the One Month Notice);
- an order for the Landlord to comply with the Act, regulation, and/or tenancy agreement; and
- the filing fee.

The hearing was attended by the Tenant, his spouse and co-tenant, MV, and by the Landlord. Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the Landlord by courier on February 11, 2022; the Landlord confirmed she received the documents on the same day. I find the Tenant's documents sufficiently served on the Landlord in accordance with section 71 of the Act.

The Landlord testified she served responsive evidence on the Tenant on April 8, 2022 by registered mail, and the Tenant confirmed he received it. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Preliminary Matter

Reading the description of the Tenant's claim for an order for the Landlord to comply with the Act, regulation, or tenancy agreement, I could not discern this claim from the description of the Tenant's claim to dispute the One Month Notice.

As the Tenant confirmed that their desired outcome from the two claims was the same, and agreed that they could both be considered in the dispute of the One Month Notice, I dismiss without leave to reapply the Tenant's application for an order for the Landlord to comply with the Act, regulation, or tenancy agreement.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the One Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Tenant entitled to the filing fee?

Background and Evidence

Those present agreed on the following regarding the tenancy. It began on August 1, 2021; rent is \$1,425.00, due on the first of the month; and the Tenants paid a security deposit of \$700.00, which the Landlord still holds.

The Landlord testified she served the One Month Notice on the Tenant by putting it in the mailbox on January 25, 2022. The Tenant confirmed he received the Notice the same day.

A copy of the One Month Notice is submitted as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, and is in the approved form.

The One Month Notice indicates the tenancy is ending because the Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Details of Cause(s) section states: "All explanations [sic] in 3 complaint letters from tenant downstairs [sic]."

The Landlord testified that the three letters were not served on the Tenant with the One Month Notice, but that the Landlord had discussed the issues with the Tenants by phone, and on January 19, 2022 had served the Tenants with a warning letter before serving the One Month Notice.

The Landlord testified that the three letters were served on the Tenants with the rest of the Landlord's evidence on April 8, 2022. The three letters are not submitted as evidence; the Landlord stated she had another hearing, with the downstairs tenant, and that perhaps she had submitted the letters to that dispute file by mistake.

A copy of the warning letter was submitted as evidence. It is a form letter, the body of which reads as follows:

Dear tenant,

RE: WARNING NOTICE –RESIDENTIAL TENANCY ACT:

It is unfortunate that after all the verbal warnings you have received, you continue to disturb your neighbours. You are in breach of your contract under section 15 of your Tenancy Agreement.

When we receive complaints of this nature we will have no alternative but to serve you with a thirty days notice under this section; your duty and obligation will remain, in that rent is due and payable for the period of notice.

15. CONDUCT. In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the Tenant and guests of the Tenant shall not disturb, harass, or annoy occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time; and shall maintain quiet between 11 p.m. and 9 a.m. Any tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment, or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused thereby, and may have the tenancy terminated on short notice pursuant to the Act.

Tenant MV testified that after receiving the One Month Notice, she contacted the Landlord in order to understand why they had been served with the Notice.

The Landlord testified she received the first noise complaint from the downstairs tenant in November 2022, about the noise produced by the Tenants' children. The Landlord testified she spoke with MV about it, who said that the kids were fine, and that nothing will change.

The Landlord testified that she called the Tenants a few more times, but they responded in the same way: all is fine and the kids are quiet.

The Landlord testified that they received another noise complaint from the downstairs tenant, stating that he was being disturbed and suffering from headaches. The Landlord testified that she told the two parties to work out the issue between them, but that has not been successful.

The Landlord testified that the downstairs tenant complains that the Tenants' children constantly stomp, run, jump, and play, such that he is not able to rest. The Landlord testified that the downstairs tenant submitted that he studies and works at home, and is losing money as he cannot work properly with the noise.

MV testified that her husband, the Tenant, has tried to talk to the downstairs tenant, and that when the downstairs tenant came up to speak with MV, "he was nice." MV testified that another time she was in the elevator at the same time as the downstairs neighbour, and that he was smiling and asking how the kids were. MV also testified that she thinks the downstairs neighbour is angry about the noise, based on what he wrote to the Landlord.

MV testified that the children are not active all the time; they have school from 8:00 a.m. to 3:00 p.m., then go to bed at 8:00 p.m. MV testified that the children try to be quiet, and that she and her husband try to take the children to play outside as much as possible.

MV testified that they have carpet in the living room and bedroom, but that the building is old, and there is a lot of sound transfer.

MV testified that when the Landlord rented them the unit, the Landlord knew the Tenants had two children.

Analysis

Section 47 of the Act permits a landlord to end a tenancy for cause.

Based on the parties' testimony, I find the Landlord served the Tenant the One Month Notice on January 25, 2022, in accordance with section 88 of the Act, and that the Tenant received it the same day.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Tenant received the Notice on January 25, 2022 and applied to dispute the Notice the next day, I find he met the 10-day deadline.

Section 47(3) of the Act states that a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. Section 52(d) requires that a notice under section 47 state the grounds for ending the tenancy. There must be sufficient details on the One Month Notice for a tenant to know how they have breached the Act or tenancy agreement.

On the One Month Notice, the Landlord has indicated that the Tenant or a person permitted on the property by the Tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

The Details of Causes section of the One Month Notice is clear in its instructions and caution to landlords, as follows:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

The One Month Notice in this case does not provide details as to why the Notice was served; it refers only to content in three complaint letters, which the Landlord did not provide to the Tenants with the One Month Notice.

The Landlord possessed the letters since at least January 25, 2022, the day the Notice was served on the Tenant, but did not serve them on the Tenants until April 8, 2022.

Tenant MV testified that having been served the One Month Notice, she contacted the Landlord to understand why they had been served the Notice.

Based on the complaint letters not being served with the One Month Notice, and the Tenant's attempt to get clarification on the Notice after it was served on them, I find the Notice included insufficient details of the grounds for ending the tenancy.

Accordingly, I find the Notice does not meet the form and content requirement of section 52 of the Act.

Therefore, I cancel the One Month Notice, as it is ineffective, pursuant to section 52. The tenancy will continue until it is ended in accordance with the Act.

I would have found the One Month Notice effective as written, had the Landlord served the three complaint letters on the Tenant along with the Notice.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in his application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Tenant's application is granted; the tenancy will continue until it is ended in accordance with the Act.

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 28, 2022

Residential Tenancy Branch