



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, CNC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.

The tenants attended with the advocate RR (“the tenant”). The landlord attended. The landlord called the witness CE who provided affirmed testimony.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties stated they were not recording the hearing.

The parties provided their email addresses to which the Decision shall be sent.

Order of Possession

I informed the parties that in the event I dismissed the tenants’ application to cancel the Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an Order of Possession in favour of the landlord. Section 55 states 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.

The landlord requested that any Order of Possession granted be effective June 30, 2022, to coincide with the end of the school year for the tenants' children.

Preliminary Issue - Multiple Remedies

The tenant applied for remedies under the *Act*, one of which is not related to the primary remedy of the cancellation of the Notice.

Section 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the claims on the Tenants' application except for the following:

- Cancellation of a One Month Notice under section 47.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the One Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

Considerable testimony was submitted in a lengthy hearing of 85 minutes. Each party submitted many documents and recordings. I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant and key evidence regarding the facts, the issues and my findings.

A copy of the tenancy agreement was submitted. The parties agreed on the background of the tenancy as follows:

Information	Details
Type of tenancy	Monthly
Beginning date	Oct 1, 2012
Vacancy date	Ongoing
Rent Payable on First of Month	\$1,852.00
Security deposit	\$775.00
Arrears of rent	0

The unit is a townhouse which has a shared wall with the neighbouring unit. At all material times, CE, the landlord's witness, and CE's spouse occupied the neighbouring adjacent unit.

The witness CE testified as follows. In late 2019, CE and his spouse moved into the townhouse adjacent to the tenants. Shortly after moving in, they discovered that noise from the tenants' home was disturbingly loud. They mentioned this to the tenants who were initially polite. However, the noise did not diminish and seemed to increase over time. They were unable to use the bedroom with a shared wall with the tenants' unit. Sometimes, the noise was from gatherings in the tenants' home that went on late into the evening or after midnight. CE and his spouse complained to the tenants many times to no avail. They then informed the landlord of the situation. The landlord's intervention had no effect. The tenants began making fun of CE as though CE were ridiculous.

The witness CE further testified as follows. On December 22, 2022, the tenants came to CE's home and the tenants' 15-year-old daughter video recorded the encounter. The tenants loudly called CE and his spouse offensive names and swore at them. The male tenant was "inches" from CE's face and CE was concerned he would be assaulted. CE and his wife were deeply disturbed by the nature of the hostility exhibited by the tenants. CE retained the services of a lawyer who wrote a letter to the tenants demanding that they cease their behaviour. CE said the situation was unbearably stressful. As a result, CE and his wife sold their home and moved shortly before the hearing.

The landlord testified as follows. He received many complaints of noise from CE after they bought their townhouse in late 2019. The landlord discussed CE's complaints with the tenants many times and attempted to bring about a resolution. The tenants responded defiantly, claiming they had done nothing wrong. The tenants refused all his efforts to resolve the situation. The landlord sent two warning letters to the tenants, copies of which were submitted and which the tenants acknowledged. The landlord said the tenants were causing him unsolvable problems and stress. After the incident on December 22, 2021, the landlord issued the One Month Notice.

A copy of the One Month Notice was submitted which is in the RTB form. The parties agreed on the particulars of the Notice as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	December 27, 2021
Effective Date of Notice	January 31, 2022
Date and Method of Service	Personal
Effective Date of Service	December 28, 2021
Reasons for Issuance	Significantly interfered, put property at risk
Application filed	January 4, 2022

The landlord primarily relied upon the following reason for the issuance of the One Month Notice:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenants testified as follows. They denied the landlord had reasons to issue the Notice. They are a family of two adults and two children. Any sound in their unit was normal for a family. CE constantly complained, they did what they could to keep the noise down, and CE was never satisfied with their efforts. They acknowledged rare occasions of family gatherings into the evening but refused to believe that CE had anything to complain about.

The tenants testified as follows. They acknowledged the encounter of December 22, 2021, took place. They conceded they went to the home of CE and his wife and requested their daughter to record the encounter. They agreed they were angry, called CE names, swore at them, and said things which they now regret. However, they said their response was caused by CE and his wife who constantly, unreasonably complained about noise. Their response was understandable given CE's and his spouse's constant complaining.

The tenants submitted an extensive evidence package which included many statements about their good character.

The tenants requested the One Month Notice be cancelled. They asserted that the problem was CE and his wife who had moved. Therefore, there was no reason to evict them.

The landlord requested an Order of Possession.

Analysis

Section 47 of the Act allows a landlord to end a tenancy on one month's notice for certain reasons.

Section 47(1)(d) of the *Act* states in part:

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, ...

Pursuant to section 88 of the *Act*, and based on the submissions of both parties, the landlord issued and served the Notice as stated above. The tenant filed the Application for Dispute Resolution within the time allowed.

Therefore, the burden shifts to the landlord to prove the reasons on the Notice. The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

On a balance of probabilities and for the reasons stated below, I find the landlord issued the Notice for valid reasons. I find the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord. In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants.

Given the contradictory testimony and positions of the parties, I must turn to a determination of credibility.

Considering the testimony and evidence in its totality, I find the landlord's submissions to be persuasive, credible, and forthright. The landlord provided consistent, logical, testimony supported by well-organized and complete documentary evidence. The evidence was supported in all material aspects by the testimony of the witness CE. I accept their combined testimony as believable and compelling.

I acknowledge that the tenants disagreed with the landlord's and CE's testimony. They asserted that the sound from their home was of a normal volume for a family. However, I do not find the tenants' submissions to be persuasive. I find their suggestion that CE or the landlord are being untruthful or are exaggerating to be unsupported by the evidence.

Based on the foregoing, I prefer the landlord's evidence to the tenants' version of events. For these reasons, where the evidence of the parties conflicts, I prefer the landlord's version.

Based on the parties' uncontradicted testimony and a review of the Notice, I find the Notice complied with section 52 of the *Act*.

I accept the landlord's and CE's testimony that they verbally informed the tenants many times that CE and his spouse were seriously disturbed by noise. The tenants were requested many times to lower the volume of the noise. I accept the evidence of CE that the noise intensified instead. I find the landlord has provided sufficient written warning to the tenants by providing two letters of warning before the issuance of the Notice. The tenants acknowledged receipt of the letters.

I find the tenants were aware of the landlord's and CE's complaints. I find the tenants were cognisant of why the landlord was seeking to end the tenancy. Nevertheless, I find they were hostile, defiant or, at best, indifferent to all overtures that they cease the objectionable noise. I accept CE's evidence that the December 22, 2021 encounter with the tenants was frightening and deeply disturbing.

Considering the totality of the landlord's evidence, I find that the landlord has met the burden of proof on a balance of probabilities that the tenants significantly interfered with or unreasonably disturbed the occupant CE and the landlord. As a result, I find the landlord has established grounds for the issuance of the Notice under section 47(1)(d)(i). I find the tenants have engaged in behaviour causing distress and disturbance to CE and the landlord meeting the standard of proof under this section.

I therefore dismiss the tenants' application to cancel the Notice and I uphold the Notice.

Referenced earlier, section 55(1) of the *Act* reads 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
 (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.

Based on my decision to dismiss the tenants' application to cancel the Notice and my finding that the landlord's Notice complies with the *Act*, I find that this tenancy ended on the effective date in the Notice.

As the tenants are still in occupation of the unit, the landlord is therefore entitled to an Order of Possession. As requested by the landlord, I grant an Order of Possession effective June 30, 2022, at 1:00 PM.

Conclusion

I grant an Order of Possession to the landlord effective June 30, 2022 at 1:00 PM after service on the tenants. Should the tenants fail to comply with this Order of Possession, the Order of Possession may be 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 06, 2022

Residential Tenancy Branch