



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession for non-payment of rent pursuant to section 55.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager and an agent. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the tenant confirmed, that the landlord served the tenant with the notice of dispute resolution package and supporting documentary evidence. The tenant testified, and the landlord confirmed, that the tenant served the landlord with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2009. The landlord's agent stated that monthly rent is \$356 and is payable on the first of each month (as written on the tenancy agreement). The tenant stated that it was \$380, which included hydro and cablevision. The landlord's agent stated that \$356 included both of those services. However, due to the nature of the application, it is not necessary for me to resolve this discrepancy, and I note it only for the completeness of the record. The tenant did not pay the landlord a security deposit or pet damage deposit at the start of the tenancy.

The landlord's property manager testified that the tenant was served with the landlord's One Month Notice to End Tenancy for Landlord's Use of the Property (the "**Notice**") on

November 10, 2021 by posting it to the door of the rental unit. The tenant confirmed he received it on that date.

The Notice indicates an effective move-out date of December 31, 2021.

The ground to end the tenancy cited in the Notice was:

- 1) the tenant or a person permitted on the property by the tenant has:
 - o significantly interfered with or unreasonably disturbed another occupant or the landlord;

The Notice provided the following details of cause:

Ongoing noise complaints from co-tenants

- October 18, 2021: yelling, having the TV on loudly and banging on the ceiling at various times of the day and night
- October 27, 2021: banging on the wall / the ceiling at 1:00 AM to 3:00 AM.

The tenant did not dispute the Notice.

The landlord's property manager testified that throughout the tenancy the landlord had received complaints about noise coming from the rental unit, and even after this notice had been issued, the complaints continued. The landlord submitted into evidence multiple warning letters issued to the tenant from 2020 and 2021 as well as logs of noise made by the tenant's neighbors from 2022.

The tenant denied causing the noises as alleged. He testified that these noises were coming from the unit located directly above him. He testified that he had made numerous complaints about this tenant, but that the landlord had not taking any action to address them.

Analysis

Sections 47(4) and (5) of the Act state:

Landlord's notice: cause

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

This provision is paraphrased on the top of the first page of the Notice, which states:

HOW TO DISPUTE THIS NOTICE

You have the right to dispute this notice **within 10 days** of receiving it, filing an application for dispute resolution with the Residential Tenancy Branch online, in person at any Service BC office or by going to the Residential Tenancy Branch office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this notice.

Based on the landlord's property manager's testimony and the Notice before me, I find that the tenant was served with the Notice on November 10, 2021. The tenant did not file an application to dispute the Notice within 10 days (or at all). Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (December 31, 2021) and must vacate the unit. Such an order is a mandatory requirement of the Act and does not allow for any discretion to be exercised on the part of an arbitrator.

As the tenant has not disputed the Notice, and as the Notice complies with the section 52 form and content requirements, the landlord is entitled to an order of possession, pursuant to section 55 of the Act. As the tenant has paid monthly rent for April 2022, the order of possession is effective April 30, 2022 at 1:00 pm.

I note that as a result of this, the issue of whether or not the tenant caused the noises alleged by the landlord is moot. In order for such arguments to have the possibility of canceling the Notice, the tenant was required to have disputed the Notice within the required time. As such, I explicitly make no findings as to whether or not the tenant caused the noise is as alleged on the Notice.

Conclusion

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by April 30, 2022 at 1:00 pm.

I order the landlord to serve a copy of this decision and attached order of possession on the tenant within three days of receiving it from the Residential Tenancy Branch.

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 12, 2022

Residential Tenancy Branch