



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

Introduction

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

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended. The agents PA and FA attended for the landlord (“the landlord”). 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 landlord called the witness VV who provided affirmed testimony. The tenant did not call witnesses.

The parties confirmed the email addresses to which the Decision would be sent.

The parties confirmed they were not recording the hearing.

Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I notified them that they could hire lawyers to obtain legal advice. I informed them that they could consult the Act, Regulation, Policy Guidelines and Rules of Procedures on the RTB public website. I notified them that they could settle their tenancy issues privately or at an RTB hearing. Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to reimbursement of the filing fee and a cancellation of 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. The landlord submitted bundles of correspondence from several occupants in the building containing many documents. Two agents attended for the landlord. The landlord also called one witness VV.

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 landlord testified about the background of the tenancy as follows:

Information	Details
Type of tenancy	Monthly
Beginning date	July 1, 2021
Vacancy date	Ongoing tenancy
Rent Payable on First of Month	\$1,350.00
Security deposit	\$775.00
Pet Deposit	\$775.00

The landlord testified as follows. The unit is in an apartment building. Neighbouring occupants started complaining about noise from the unit shortly after the tenant moved in. Complaints included loud noise throughout the night, thumping, bottles dropping, loud voices, disturbing sounds of grunting, the tenant's dog barking, the dog crying while being left alone for many hours at a time, and so on. The landlord submitted many emails of complaint from occupants of several other apartments in the building. The landlord testified that they met with the tenant on several occasions and told him about the complaints. The complaints did not stop and adjacent occupants continued to complain about the noise from the unit.

The parties agreed the landlord issued a One Month Notice in the RTB form. The Notice was dated January 25, 2022, and personally served upon the tenant the next day. The Notice was effective February 28, 2022. The reason for issuance of the Notice was as follows:

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

The landlord's witness VV testified as follows. They live in the unit immediately below the unit and they "suffer" from the noise which includes shouting, the tenant's dog barking, jumping, and smoke from the unit entering theirs. Some nights, they are unable to sleep because the noise from the tenant's unit goes on for hours. The noise from the tenant's unit is unbearable, and they will move out if the tenant is not evicted. VV stated their "sense of security and peace" is gone because of the tenant and his behaviour. The noise continues to this day unabated.

The tenant testified as follows. While the tenant was aware of the noise complaints, some of them were exaggerated and made up. He stated he worked in a bar and sometimes came home late, at 2 AM. He did his best to be quiet and to respect the neighbours. He asked that the One Month Notice be dismissed, and the tenancy continue.

The tenant filed the Application for Dispute Resolution within the time limit, on January 26, 2022.

The landlord requested an Order of Possession effective May 31, 2022, at 1:00 PM.

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 tenant has significantly interfered with or

unreasonably disturbed another occupant or the landlord. I accept the documentary evidence of several tenants and the testimony of the tenant VV that the tenant creates considerable loud noise, the volume and frequency of the noise is unacceptable, the landlord has issued multiple warnings, adjacent occupants are seriously disturbed, and the tenant has not corrected the situation.

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 VV. I accept their combined testimony as believable and compelling.

I acknowledge that the tenant disagreed with the landlord's and the witness's testimony. However, I do not find the tenant's submissions to be persuasive. I find the suggestion that witnesses are being untruthful or are exaggerating to be unsupported by the evidence.

Based on the foregoing, I prefer the landlord's evidence to the tenant's version of events. For these reasons, where the evidence of the parties conflict, 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 find as follows. I accept the landlord's evidence that they verbally informed the tenant many times that his neighbours were disturbed by his noise. The tenant acknowledged that the first meeting took place shortly after he moved in. The tenant was requested many times to lower the volume of the noise. I accept the landlord's evidence that the noise continued. I do not accept the tenant's assertion that the noise had been reduced. I find the landlord has provided sufficient warning to the tenant through verbal discussion and by informing the tenant of multiple detailed written complaints before the issuance of the Notice.

I find the tenant was cognisant of why the landlord was seeking to end the tenancy. Nevertheless, I find the tenant was indifferent to all overtures that he cease the objectionable noise and took no significant action.

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 tenant significantly interfered with or unreasonably disturbed the occupant VV, other occupants 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 tenant has engaged in behaviour causing distress and disturbance to the occupants as claimed and the landlord meeting the standard of proof under this section.

I therefore dismiss the 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 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 tenant is 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 May 31, 2022, at 1:00 PM.

Conclusion

I grant an Order of Possession to the landlord effective May 31, 2022, at 1:00 PM after service on the tenant. Should the tenant 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 29, 2022

Residential Tenancy Branch