



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, 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 21, 2022, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated January 18, 2022 (the One Month Notice); and
- the filing fee.

The Landlord was present, with her property manager (KL); the Tenant was present and accompanied by articulated student MG. 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.

MG submitted that the Tenant served the Notice of Dispute Resolution Proceeding (NDRP) and some of her evidence on the Landlord by registered mail on February 5, 2022, and that all of the Tenant's evidence was served on the Landlord via email on April 7, 2022. KL confirmed she received the Tenant's NDRP and evidence. I find the Tenant served the Landlord in accordance with section 89 of the Act.

KL testified she served the Landlord's responsive evidence on the Tenant via email on April 5, 2022; the Tenant confirmed she received it. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Preliminary Matter

I have added the Landlord's name to the cover page of this decision. This name is found on the signed tenancy agreement and the One Month Notice, so the Tenant

would have had full knowledge of the Landlord's name and will not be prejudiced. This amendment, in accordance with section 64(3)(c) of the Act, is to allow the decision and order of possession to reflect the legal name of the Landlord.

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 particulars regarding the tenancy. It began August 1, 2021; rent is \$1,200.00, due on the first of the month; and the Tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00, which the Landlord still holds.

KL testified that the One Month Notice was served on the Tenant on January 18, 2022 by email and by leaving a copy in the mailbox; the Tenant testified she received it on January 18, 2022.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the Landlord's agent, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The reasons indicated for the One Month Notice are:

- the Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - put the landlord's property at significant risk.

The Details of the Events section refers to three breaches of the tenancy agreement: conduct, waste management, and repairs – tenant's obligation.

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so" is not a reason indicated on the One Month Notice.

KL testified that the former upstairs tenant had complained about the Tenant screaming at night, pounding on the door, and “ranting and raving.”

The Landlord has submitted as evidence emails from the former upstairs tenant, which include complaints about the Tenant screaming and beating the walls and ceiling, not disposing of garbage properly, and smoking drugs in her unit. The former upstairs tenant’s emailed comments regarding the Tenant are disparaging and include name-calling.

The Landlord’s written submission states that the former upstairs tenant “was evicted for conduct as is evident by the language used towards everyone,” referencing the former upstairs tenant’s emails complaining about the Tenant and the Landlord.

KL testified that she experienced the Tenant yelling and screaming during a November 22, 2021 visit to the property.

KL testified that a new tenant moved into the upstairs unit in March 2022, and that KL has been receiving similar complaints from him about the Tenant being excessively loud. The Landlord submitted as evidence copies of emails from the new upstairs tenant complaining about the Tenant waking him up at 5:00 a.m. by making excessive noise. The Landlord’s written submission states that the new upstairs tenant is not sure he will be able to stay, due to unspecified safety concerns, the Tenant’s noise, and the Tenant smoking pot in the stairwell.

On behalf of the Tenant, MG submitted that regarding the allegation that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, the Tenant and the former upstairs tenant had “a bad relationship,” and that in the complaints submitted as evidence, the former upstairs tenant referred to the Tenant using derogatory terms. MG submitted that this calls into question the validity of the former upstairs tenant’s complaints against the Tenant.

KL testified that the Tenant allowed a large amount of garbage to accumulate in the unit, and in the bins outside, and was not putting out the bins on garbage day.

MG submitted that there were no photos of garbage piles submitted as evidence, and that the Tenant stated she takes the garbage out regularly.

The Landlord testified that the Tenant and Landlord had agreed via text message on July 30, 2021 that the Tenant would smoke cannabis at the back fence, and not in the

exterior stairwell. The Landlord testified that the Tenant was then given a written warning in August 2021 about smoking in other locations on the property. KL testified that the Tenant has repeatedly smoked in the unit and in the exterior stairwell. The Landlord has provided a written submission stating that the Tenant's smoking resulted in numerous complaints from the former upstairs tenant, and that the Landlord's husband witnessed the Tenant smoking in the stairwell.

Regarding the allegation that the Tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord, MG submitted that the Tenant's "pot smoking issues" were a material breach issue, and that breach of a material term was not one of the reasons selected on the One Month Notice.

Regarding the allegation that the Tenant has put the Landlord's property at significant risk, the Landlord testified that the Tenant has removed cupboard doors, allowed garbage to build up, has not cleaned regularly, and smoked in the exterior stairwell.

MG submitted that the Tenant has been going through a difficult period, and has sought treatment. Submitted as evidence is a letter dated April 7, 2022 which states that the Tenant is accessing mental health supports.

Analysis

Based on the testimony of KL and the Tenant, I find the Landlord served the One Month Notice on the Tenant, in accordance with section 88 of the Act, on January 18, 2022, and that the Tenant received it on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the Landlord's agent, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

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 18, 2022 and applied to dispute it on January 21, 2022, I find the Tenant met the 10-day deadline.

Section 47(1)(d)(i) of the Act permits a landlord to end a tenancy if the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

KL has provided affirmed testimony that the Tenant has unreasonably disturbed both the former and current upstairs tenants by being excessively loud, and KL has submitted as evidence emails from both the upstairs tenants in support.

However, as both KL and MG have acknowledged that the relationship between the former upstairs tenant and the subject Tenant was strained, and considering the disparaging tone and content of the former upstairs tenant's emails regarding the Tenant, I find the former upstairs tenant lacking credibility, so give reduced weight to his assessments.

KL testified that on a visit to the property in November of 2021, she heard the Tenant yelling and screaming in the rental property.

Based on the evidence before me, and on a balance of probabilities, I find the Landlord has provided sufficient evidence to demonstrate that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Therefore, the One Month Notice is upheld.

The Landlord is entitled to an order of possession. As KL testified that the Tenant has paid rent for April, the tenancy will end at 1:00 p.m. on April 30, 2022.

As the Tenant is unsuccessful in her application, I decline to award her the filing fee.

Conclusion

The Tenant's application is dismissed. The tenancy will end at 1:00 p.m. on April 30, 2022.

The Landlord is granted an order of possession which will be effective at 1:00 p.m. on April 30, 2022. The order of possession must be served on the Tenant. The order of possession 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 25, 2022

Residential Tenancy Branch