

## **DECISION**

Dispute Code          CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on February 9, 2022. The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause dated January 31, 2022 (the One Month Notice), pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing and was assisted by PP, a legal advocate. EG and DK also attended with the Tenant but did not participate. The Landlord was represented at KO and DH. RM also attended on behalf of the Landlord but did not participate.

On behalf of the Tenant, PP advised that the Notice of Dispute Resolution Proceeding and supporting evidence were served on the Landlord by registered mail on February 18, 2022. PP also advised that a subsequent evidence package was served on the Landlord by registered mail on April 21, 2021. KO acknowledged receipt of both packages.

On behalf of the Landlord, KO testified that the evidence upon which they intend to rely was served on the Tenant by email and on the Tenant's door on May 3, 2022. The Tenant and his advocates confirmed receipt.

No issues were raised with respect to service or receipt of the above packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order an order cancelling the One Month Notice?
2. If not, is the Landlord entitled to an order of possession pursuant to section 55(1) of the Act?

### Background and Evidence

The parties agreed the tenancy began on September 1, 2016. Rent of \$730.00 is due on the first day of each month. The Tenant paid a security deposit of \$387.50, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord issued the One Month Notice on the following bases:

- Tenant has allowed an unreasonable number of occupants in the unit;
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- Tenant or a person permitted on the property by the Tennant has put the Landlord's property at significant risk; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the ground for ending the tenancy, and is in the approved form.

On behalf of the Landlord, KO testified that the Landlord was in the same position regarding issues with the Tenant a year ago. At that time, the parties attended a hearing and came to an agreement that the tenancy would continue. A copy of the decision dated March 22, 2021, was submitted into evidence and describes the following terms:

The parties agreed that the Notice will be cancelled based on the following:

1. The tenant agreed that they will not wedge anything in the exterior door that leaves the premise unsecure.
2. The tenant agreed to ensure that their guests will keep the noise to a reasonable level at all times, even between the hours of 8am and 10pm.
3. The tenant agreed that they will restrict their guest to be no more than 4 at onetime and will let the landlord know if they are planning to have more, such as for a birthday party (this was the tenant's suggestion).
4. The tenant wants the rental unit to be declared alcohol free and is simply a tool for the tenant to be able to control their guests (this was the tenant's suggestion, as they cannot drink).
5. The tenant agreed that that they will escort any of their guests out of the building when they leave, this is to ensure their guest are not loitering or causing problems in the common areas.
6. The tenant agreed that the landlord can contact their advocate at anytime to discuss issue of their tenancy; and
7. The parties agreed that the tenancy will continue until legally ended.

However, KO testified that these issues have continued, and that the Landlord gets complaints about the Tenant and guests partying, knocking on the wrong doors, yelling, and guests throwing rocks at the Tenant's window to get his attention.

On behalf f the Landlord, KO referred to a series of text messages included with the Landlord's evidence package. These describe text messages received from GL on April 30, 2021 ("Music blaring and people yelling"), July 19, 2021 ("drunks banging on doors again yelling for [Tenant]"), August 6, 2021 ("so drunk right now he just tried keying into my apartment"), October 23, 2021 ("[Tenant] is on a bender, screaming and hitting"), January 27, 2022 ("hes at it again, this time hes got the door open and screaming").

The Landlord also submitted into evidence a letter from the Landlord to the Tenant dated January 31, 2022, which describes “ongoing partying and the guests that are frequently in the building...complaints from other tenants and RCMP visits...disregard for the overall peace and security of our building...other tenants are being disturbed and unwanted guests continue to loiter at the entrances in groups, most often inebriated”.

More recently, in an email dated March 21, 2022, SW asked the Landlord to ask the Tenant “to ask his guests to stop hollering for him to open the door at all hours of the day & night.” The writer describes guests of the Tenant blocking the hallway and feeling unsafe.

In addition, KO also testified that on March 22, 2022, she witnessed the RCMP brining the Tenant home. She testified that the Tenant appeared to be intoxicated. KO testified that other tenants have expressed a desire to leave due to the behaviours of the Tenant and his guests.

On questioning by PP, KO confirmed the text messages referred to above were from another occupant of the rental property, that she does not have police file numbers for each incident where the RCMP were involved, that individuals outside were calling to the Tenant (even if uninvited by the Tenant and not permitted to enter the rental property), and that the Landlord intends to secure the rental property. KO stated it is unfair that other tenants have to deal with the behaviour of the Tenant and his guests.

On questioning by PP, the Tenant testified that he would like to have a professional relationship with the Landlord, is willing to work with PP as his advocate, that the Tenant’s rental unit is clean and tidy (the Tenant referred to photographs of his rental unit submitted into evidence), and that the rental property is not secure. The Tenant also testified that he had a group of 5-6 guests in his rental unit about two weeks ago but that the RCMP did not attend at that time.

Also included with the Tenant’s documentary evidence was a type-written note from the Tenant which acknowledged that the Landlord has approached him “multiple times” about complaints, but states there is “little to no drinking” in his rental unit.

At the conclusion of the hearing, PP submitted that the Tenant is 63 years old, has been harassed by other tenants, and that the One Month Notice did not meet the requirements of the Act. She submitted that the Tenant deserves a chance to rectify the situation with support.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47(1)(d) confirms that a landlord may end a tenancy by giving a notice to end tenancy if he tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

In this case, I find there is sufficient evidence before me to conclude that the Tenant and his guests have unreasonably disturbed other occupants of the residential property by playing loud music, yelling, and trying to let himself into other rental units. Further, I find there is sufficient evidence before me to conclude that guests of the Tenant have unreasonably disturbed other occupants of the rental property by yelling to the Tenant and throwing rocks at the Tenant's windows to be let in, and by being loud in the Tenant's rental unit and the rental property.

Considering the above, I find that the Tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. I find the One Month Notice complies with the form and content requirements of section 52 of the Act. Therefore, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenant.

### Conclusion

The Tenant's request for an order cancelling the One Month Notice is dismissed without leave to reapply.

By operation of section 55(1) of the Act, the Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in 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: May 13, 2022

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Residential Tenancy Branch