



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, CNC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents, LH and SB, Witnesses, GE, LL, MD, the Tenant, GP, Support, SS, Legal Advocate and Legal Supervisor, TH and LH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice via Canada Post registered mail on February 22, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was deemed served on the Tenant on February 27, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence on March 18, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant referred me to the Canada Post tracking number as evidence of proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Tenant’s NoDRP package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on March 23, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served their evidence on the Tenant on June 6, 2022 by posting the evidence on the Tenant’s door. The Tenant confirms receipt of the Landlord’s evidence. I find the Tenant was deemed served with the Landlord’s evidence on June 9, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant personally served the Landlord with additional evidence on June 2, 2022. The Landlord confirmed receipt of the additional evidence. I find that the Tenant’s additional evidence was served on the Landlord on June 2, 2022 pursuant to Section 88(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on April 1, 2021. Monthly rent is \$701.00 payable on the first day of each month. A security deposit of \$361.50 and a pet damage deposit of \$361.50 were collected at the start of the tenancy and are still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another

occupant or the landlord of the residential property, and the tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was March 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

1st noise/conduct warning letter sent January 12, 2022 – we received complaints, along with video footage, of the residents dog barking incessantly throughout the day and night.

2nd noise/conduct warning letter sent February 11, 2022 – we received complaints of the resident “yelling, screaming obscenities, stomping up and down her unit, and pounding on the wall”

3rd noise/conduct warning letter sent February 19, 2022 – [Landlord’s business name] managers were on-site with [name] security and the resident threw a glass ornament with white sand and pebbles over her balcony railing and it smashed on the pavement below. She then proceeded to smash a plastic object on the railing repeatedly, while yelling loudly at other residents.

The Landlord’s Agents, LH and SB, personally witnessed the Tenant smashing the glass ornament to the ground over the Tenant’s balcony. SB said this event occurred around 10 a.m. and it was light enough that they could clearly see the Tenant’s actions. Also, the Tenant was smashing a plastic object on her balcony railing shouting, “Look at me! Look at me! Look at me!”

The Landlord submits that their expectation of remediation of noise/conduct violations of their tenancy agreement must be immediately.

The Landlord’s Witness, GE, testified to the Tenant’s dog’s incessant barking, the Tenant’s smoking, and the Tenant’s harassment of GE’s young children. GE stated the building is family-focussed, and his children do not want to stay with him because of the Tenant. GE classified the Tenant’s harassment as targeted bullying and he has reported her behaviours to the police on, at least, five occasions.

Landlord’s Witness, MD, testified that he lives in proximity of the playground, and he has observed the Tenant allowing her dog to defecate in planters around that area. MD has witnessed the Tenant hanging her dog’s feces’ bags on cars in the parking area,

and by the door of the building. MD has called the police to report these behaviours, and he has reported this to the Landlord.

Landlord's Witness, LL, has reported the Tenant's unruly behaviour to the Landlord on approximately three occasions. LL testified that the Tenant often screams obscenities at her and has threatened LL that, *"she better not be ratting out on me or she is going to get it."* LL stated the Tenant has taunted and threatened LL and her grandson. LL has called the police about the Tenant on two or three occasions, but this resulted in the Tenant threatening her, and smearing feces on LL's front door. LL said her car has been keyed and egged and she is sure it was the Tenant. The police attended the building after LL's door was smeared with feces. LL wrote in an email to the Landlord, *"I feel very unsafe, especially considering that there appears to be a relationship between this woman and a young man living beside me, who she told to mess me up. ... Both of these residents smoke weed on their balconies."*

The Tenant testified that it is not her dog barking incessantly, but the dog on the floor below her that is barking. The Tenant stated her dog is 15 years old and he naps mostly all day. He barks for his breakfast and dinner, but is quiet other times.

The Tenant stated she does not smoke cigarettes or marijuana. She states smoke comes into her suite through her bedroom window and she has to move to sleep in the kitchen, so she is not bothered by the smoke.

The Tenant maintains she is a peaceful person and she moved to this rental property to heal, not to be around children. When she was experiencing noise from the tenant above her, she would bang on the ceiling with a broom. She said, though, that she was doing this so often it got ridiculous. She said she stopped. The Tenant shared that she has requested a move to another suite on approximately eight occasions, but the management has not responded to her requests.

The Tenant said she was not in the building when whoever threw the glass ornament down to the ground. She was with her Support person that day from 8 a.m. to 2:30 p.m. She denies it was her who threw the glass ornament down to the ground.

The Tenant denies smearing feces on LL's door. The Tenant said it was LL's neighbour or the person who lives next door to the Tenant. She states they are the problem tenants.

The Landlord is seeking an Order of Possession, and the Tenant seeks to cancel the Landlord's One Month Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant section of the legislation in this matter. It states:

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,*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received, and*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (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.*

...

The Tenant was deemed served with the One Month Notice on February 27, 2022. I find the Landlord's One Month Notice complies with the form and content requirements specified in Section 52 of the Act. The Tenant applied for dispute resolution on March 1, 2022 which is within 10 days after the date the Tenant received the One Month Notice.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem. (emphasis mine)

When the Landlord writes the Tenant that she has breached a material term of the tenancy agreement, they expect that the problem will be fixed "immediately". I find that an "immediate" deadline for remedy of a breach of a material term is not reasonable. A Tenant must be given time to correct the problem. I find that the Landlord has not proven on a balance of probabilities that the Tenant breached a material term of the

tenancy agreement, and the Landlord gave her a reasonable deadline to fix the problem. The Landlord has not proven cause in this regard.

The Landlord's testimony about noise/conduct complaints, accompanied especially by the Witnesses who gave evidence in the hearing, does satisfy me that the Tenant has significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property. The eyewitness accounts of the Tenant allowing her dog to defecate in a children's play area, then later hanging bags of dog feces on occupants' cars I find to be egregious and unsavory in this family-focussed building. The police have been called an excessive number of times when reports of the Tenant's conduct instigated the calls. I also find the Landlord's story about the smashed glass ornament to be credible. It was daylight hours, and I believe the Landlord clearly saw the Tenant during this chain of events. I find the Landlord has met their burden and proven cause to end this tenancy. I find that the Tenant has significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property, and I dismiss the Tenant's application to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenant was unsuccessful in her application, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 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.*

I previously found that the Landlord's One Month Notice complied with Section 52 of the Act, and I have upheld the Landlord's notice. I grant the Landlord an Order of Possession pursuant to Section 55(1) which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord's One Month Notice is upheld, and I grant an Order of Possession to the Landlord effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 22, 2022

Residential Tenancy Branch