



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Society of Hope
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, LRE, PSF, LAT

Introduction

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

1. cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
2. a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
3. an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
4. authorization to change the locks, pursuant to section 31; and
5. an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65.

The tenant, the property manager and the portfolio manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant called witness C.C. and the property manager called witness F.R. Both witnesses provided affirmed testimony.

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

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Preliminary Issue- Presentation of Evidence

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure states:

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Both parties were advised at the start of the hearing that their evidence must be presented, and that evidence not presented may not be considered.

Preliminary Issue- Sever

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the "One Month Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the One Month Notice.

Preliminary Issue- Service

Both parties agree that the landlord was served with the tenant's application for dispute resolution and evidence package. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because receipt was confirmed.

The property manager testified that the landlord's evidence was served on the tenant via registered mail on May 11, 2022. A Canada Post registered mail receipt stating same was entered into evidence. The tenant testified that she received the above package within five days, likely on May 16, 2022. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below. Only evidence presented has been considered.

This hearing lasted 79 minutes, 19 minutes longer than what was scheduled, to ensure both parties were granted a full opportunity to be heard, to present their evidence and to call witnesses.

Both parties agreed to the following facts. This tenancy began on November 15, 2021 and is currently ongoing. Monthly rent in the amount of \$880.00 is payable on the first day of each month. In addition, the tenant pays \$25.00 per month for parking and \$10.00 per month for laundry. A security deposit of \$440.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The property manager testified that the One Month Notice was posted on the tenant's door on March 8, 2022. The tenant testified that she received the One Month Notice between March 8-10, 2022. The One Month Notice:

- is signed by the property manager and dated March 8, 2022,

- gives the address of the subject rental property, and
- is in the approved form, RTB Form #33.

The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Details of Cause section of the Notice states:

The tenant, [name redacted for privacy], has been causing an unreasonable disturbance first reported Jan 22-March 6, on the [subject rental building] with loud, prolonged yelling and swearing heard by other tenants and staff on numerous occasions over the course of these 6 weeks. The RCMP have attended on 2 occasions. The tenant has been issued 2 formal letters requesting for this disturbance to cease or be served a One Month Notice to End for Cause. This disturbance is in direct contravention of section 19 of her rental agreement.

The property manager testified that the landlord is a not-for-profit organization for seniors housing. The property manager testified that the first complaint against the tenant was received on January 26, 2022 via email. The complaint email from tenant B.R. was entered into evidence and states in part:

....I want to make a complaint about the new tenants that moved into [the subject rental property]. On a daily and nightly basis they are fighting and screaming very loud with the most foul language. I had to bang on the wall 2 at 3 am to get them to stop yelling. I have my 9 yr old granddaughter with me daily and I have to send her to the bedroom so she doesn't hear the foul language...

The landlord entered into evidence a responding email from the property manager dated January 26, 2022 which requests tenant B.R. to provide a complaint in writing detailing what tenant B.R. is hearing, when, how long and in what way the disturbance was unreasonable.

The landlord entered into evidence another email from tenant B.R. dated February 6, 2022 which states that the screaming and profanity has continued.

The property manager testified that tenant B.R. provided a written complaint on January 31, 2022. The written complaint lists the following dates and times yelling and profanity were heard emanating from the tenant's unit:

- January 25, 2022- 12:45 p.m.
- January 28, 2022- 7:25 a.m.
- January 28, 2022- 7:45 p.m.
- January 29, 2022- 5:30 to 7:30 a.m.
- January 29, 2022- 11:40 a.m.
- January 30, 2022- 10:15 a.m.

The property manager testified that on February 2, 2022, she telephoned the tenant and spoke to her about the complaints received and informed her of the warning letter she was about to receive.

The property manager testified that a warning letter was posted on the tenant's mailbox on February 3, 2022. The warning letter was entered into evidence and states:

....Society policies and rental agreement state that *excessive noise shall not be made at any time in the residential premises*. Excessive noise may be considered an unreasonable disturbance constituting a Material Breach of the rental agreement. Material Breaches such as this can negatively affect a tenancy and the [landlord] takes them seriously.

Please cease from making unreasonable noises in the unit especially between the hours of 11 pm – 7 am. If ongoing unreasonable noises continue to disturb the tenants below you, it may jeopardize your tenancy.

The property manager testified that on February 3, 2022 she had maintenance staff on the property and they reported hearing the tenant yell, scream and use foul language in the laundry room. The property manager entered into evidence an email dated February 3, 2022 from the landlord's maintenance person which states:

...I hear a whole lot of yelling and swearing and I went to check out the first floor laundry to find the same lady is in there by herself cussing up a storm. I poked my head in and asked if everything was OK in there. She turned around said, oh yeah. When I said I heard all the swearing and yelling she kind of side stepped the question and then proceeded to introduce herself and ask me about the inspection process....

The property manager testified that on February 10, 2022 a different landlord staff member was at the subject rental building and reported that he heard the tenant swearing and yelling. The property manager entered into evidence an email dated February 10, 2022 from the staff member, which states in part:

....we just moved to our next project across the hall [from the subject rental property]. Well we were working on that, [the tenant] was doing her laundry, and was going back and forth down the hallway and a few times she would Yell very loudly, as she was walked past where we were working "I'm not F***ing stupid you know" I've got F***ing cameras in my house."...

The property manager testified that she received another written complaint from tenant B.R. on February 12, 2022. The written complaint lists the following dates and times yelling, banging and profanity were heard emanating from the tenant's unit:

- February 6, 2022- 10:00 a.m. to 1:00 p.m.
- February 7, 2022- 9:00 a.m. to 11:30 a.m.
- February 7, 2022- 5:00 p.m. to 9:00 p.m.
- February 8, 2022- 6:15 a.m. to 7:30 a.m.
- February 8, 2022- 8:30 p.m. to 11:00 p.m.
- February 9, 2022- 9:50 a.m. continued all day
- February 10, 2022- 7:50 a.m. continued all day. Police attended around 3:00 p.m. Continued after police left.
- February 11, 2022- 8:15 a.m.
- February 11, 2022- 7:30 p.m.
- February 12, 2022- 5:10 a.m., 7:00 a.m. Police attended at 8:10 a.m. Continued after police left until 2:00 p.m.
- February 13, 2022- 9:10 a.m.- 11:00 a.m.

The written complaint from tenant B.R. goes on to state:

I will not speak to this woman because she is most definitely unstable and scares me.... This documentation does not list all the times of this as I cannot sit in my living room and list them for you. We now spend our majority of time in our bedroom to get away from it.

The property manger testified that tenant B.R.'s living room shares a wall with the tenant.

The property manager testified that on February 10, 2022 the RCMP attended at the subject rental property due to the tenant's yelling and swearing. The property manager entered into evidence her notes from that visit, which state:

2 RCMP attended at my call Feb 10 2:40pm
1 officer went into the unit. Prior to entering, he could hear shouting in the unit.
The second officer remained in the hallway.
The officer was in the unit for 23 minutes. When he exited, he said he thought it was early signs of dementia. He said she was yelling at the letter I sent regarding her unit contents. She also talked about someone stealing coffee, 5 strips of bacon etc. He suggested IH if things escalate but the RCMP would attend if we called.

The property manager testified that other tenants in the subject rental building have complained about the tenant's yelling and profanities. The property manager entered into evidence a handwritten complaint from a tenant who resides two units down from the tenant which states:

The new occupant at [the subject rental property] is creating problems at all hours of the night, yelling loud, foul languages. She is disturbing the peace on this side of the building.

The above complaint is stamped received February 14, 2022.

The property manager entered into evidence another written complaint regarding events on February 12-13, 2022 from the tenant's direct neighbour (not tenant B.R. but the neighbour on the other side). The complaint is stamped received February 14, 2022 and states:

February 12, 2022
5am I could hear the neighbour thru my bedroom wall swearing and yelling.
When I went out in the hallway could hear her swearing and being very loud.
February 13, 2022
9am Very loud and swearing.

The property manager entered into evidence another written complaint from a tenant one floor above the tenant. The complaint is stamped received February 14, 2022 and states:

Going down to visit [another tenant on same floor as the tenant]. I hear her swearing and very loud.

The property manager testified that after receiving the above complaints, she posted another warning notice on the tenant's mailbox on February 16, 2022. The letter details the complaints received and states in part:

....Please cease from making unreasonable noises in the unit and common areas. However, should further complaints of this nature be received the [landlord] **shall** issue and serve a "One Month Notice to End for Cause"....

The property manager testified that she received another written complaint from tenant B.R. regarding the tenant's yelling and foul language. The written complaint is dated February 23, 2022 and lists the following dates and times that yelling, banging and profanity were heard emanating from the tenant's unit:

- February 14, 2022- 9:20 a.m., lasted most of the morning
- February 16, 2022- 7:45 a.m., ongoing when tenant B.R. left the building at 8:30 a.m.
- February 17, 2022- 5:30 a.m. to 7:30 a.m., 11:30 a.m., 4:00 p.m. to 5:30 p.m., 8:50 p.m. until unknown
- February 18, 2022- 10:00 a.m. to 1:30 p.m.
- February 20, 2022- 10:45 am to unknown
- February 21, 2022- 1:45
- February 22, 2022- 5:40 a.m. to 7:30 a.m.
- February 23, 2022- 5:10 a.m. to 7:00 a.m.

The property manager testified that she received another written complaint from tenant B.R. regarding the tenant's yelling and foul language. The written complaint is dated March 6, 2022 and lists the following dates and times that yelling, banging and profanity were heard emanating from the tenant's unit:

- March 2, 2022- 2:13 p.m. to 4:00 p.m.
- March 3, 2022- 6:15 a.m. to 7:00 a.m., 2:55 p.m. to 4:30 p.m.
- March 4, 2022- 3:40 p.m. to past 6:00 p.m.
- March 5, 2022- 7:20 a.m. to 7:40 a.m., 9:40 a.m. and sporadically throughout the day
- March 6, 2022- 10:20 a.m. to unknown

The property manager testified that the One Month Notice was then posted on the tenant's door on March 8, 2022. The property manager entered into evidence more noise complaints received from other tenants of the building after March 8, 2022.

The landlord called witness F.R. Witness F.R. testified that he is the spouse of tenant B.R. who authored the complaint letters detailing the dates and times of the disturbances from the tenant. Witness F.R. testified that he lives with his spouse next door to the tenant.

Witness F.R. testified that he has resided in his unit for the past five to six years and that he, his spouse and their granddaughter have had to listen to the tenant's constant vulgar language, yelling and screaming since she moved in. Witness F.R. testified that he and his family cannot sit in the living room, which shares a wall with the tenant because of the constant disturbances. Witness F.R. testified that the disturbances come at all hours of the day and night and have woken him up.

Witness F.R. testified that he has had to shut down his zoon meetings because the other attendees can hear the tenant's vulgar language and that he has to move his granddaughter to the bedroom so that its harder for her to hear the tenant.

The tenant testified that the other tenants in the building are fabricating the complaints and that she is not yelling and swearing. The tenant testified that witness F.R. can't see through her walls and can't tell what's going on in her apartment. The tenant testified that she was not even home on the dates and times of some of the complaints, no documentary evidence to support this testimony was presented in the hearing.

The tenant asked witness F.R. how he knows the noise is coming from her unit. Witness F.R. testified that he can hear her through the wall and through her door when he is in the hallway. Witness F.R. testified that the police have attended at the tenant's door and asked her to stop screaming and she said she would.

The tenant testified that the police attended on her request for another matter. No documentary evidence to support this testimony was presented in the hearing. The tenant testified that witness F.R. and the property manager are making unfounded accusations. The tenant testified that the RCMP would not have commented on her mental health to the landlord. The tenant entered into evidence a doctor's note which states that she has no history of mental health issues.

Witness F.R. testified that he does not know the tenant and has nothing against her but wants to live in peace and free from disturbance.

The tenant testified that this has been a hostile situation which started when she first moved in. The tenant alleged that the landlord's agents entered her unit without permission.

The tenant testified that she has a physical medical condition that requires her to rest and that she does not yell and swear. No documentary evidence to support the above testimony was presented in the hearing. The tenant testified that tenants B.R. and F.R. are fabricating the noise complaints.

In regard to the alleged noise complain on February 13, 2022, the tenant testified that she was not yelling and screaming and was having a dinner party. In support of this testimony the tenant entered into evidence an undated photograph of food, drink and flowers on a dining room table.

The tenant testified that she entered into evidence a letter from a friend supporting her testimony, dated May 18, 2022. The tenant entered into evidence an email dated May 18, 2022 which states that the complaints against the tenant "seem to be made up". The majority of the email pertains to the tenant's claims that were severed and makes claims against the landlord and other tenants that are unrelated to the One Month Notice. The email alleges that the One Month Notice was served because the tenant did not want to follow the same religion as Witness F.R. and tenant B.R.

The tenant called the author of the May 18, 2022 email as a witness ("witness C.C."). Witness C.C. testified that the landlord was not treating the tenant with dignity and respect. Witness C.C. testified that the tenant suffers from chronic fatigue syndrome and sleeps 12 hours per day so could not yell and scream all the times reported by other tenants. The tenant did not present medical documentation supporting the above testimony.

Witness C.C. testified that he has never known the tenant to use profanities and throw things against walls. Witness C.C. testified that since the F.R. and B.R.'s bedrooms don't share a wall with the tenant, their complaint of being woken up must be fabricated because the bedrooms are too far away to hear the tenant.

Witness C.C. testified that as long as the tenant doesn't get crossed, she doesn't get angry.

Witness C.C. testified that the tenant had medical appointments on Tuesday and Friday mornings, volunteers at the legion on Thursdays, and visits him at his apartment on some Sundays and Mondays, so the times and dates of the alleged disturbances could not have occurred. The tenant did not present any documentary evidence to support the above testimony.

Witness C.C. testified that the complaints have occurred because the tenant turned down solicitation of tenant F.R.'s religion. The tenant entered into evidence a letter from another tenant in the building, spreading the above religion's promotion. Witness C.C. testified that he knows F.R. shares the religion because he watched him leave his apartment and go to that religion's place of worship.

The tenant was provided with ample time to question witness F.R.; however, the above allegations were never put to him. The author of the religious letter is not the author of any of the written complaints entered into evidence.

The tenant did not provide any testimony regarding religious motivations for the complaints received by the landlord against her.

Analysis

Based on the testimony of both parties, I find that the tenant was served with the One Month Notice in accordance with section 88 of the *Act*. Upon review of the One Month Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the

story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

I find that the independent recollection of events provided by the property manager and witness F.R., and the written complaints provided by tenant B.R., two employees of the landlord and three other tenants in the subject rental building, are in harmony with each other. I find that collusion on this scale is highly unlikely, and that on a balance of probabilities, their testimony and written statements are an accurate representation of what they heard. I find that the tenant's testimony is unsupported and inconstant with the evidence and other testimony presented and provided at the hearing.

I find the testimony of witness C.C. to be of little value as the majority of witness C.C.'s testimony was speculative, and no supporting evidence was presented. In particular, I place little weight on the comments pertaining to witness F.R.'s religion as these allegations were not put to witness F.R., depriving him of the opportunity to respond, and were unsupported by documentary evidence.

I note that the tenant had ample opportunity to question witness F.R. and no questions pertaining to witness C.C.'s above allegations were asked. I also note that the neighbour who wrote the religion promoting letter was not one of the tenants who submitted a written complaint against the tenant and I find, on a balance of probabilities, is wholly unrelated to the One Month Notice.

I find the entire argument regarding religious motivation behind the complaints to be frivolous and unsupported.

I find that tenant's evidence is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognise as reasonable in that place and in those circumstances. I therefore accept the property manager and witness F.R.'s version of facts over that of the tenant's, which are supported by written complaint letters and emails reporting the tenant's disturbances.

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the 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.

I find on a balance of probabilities, based on the property manager's testimony, the complaint letters entered into evidence and witness F.R.'s testimony that the tenant has been screaming, using profanities and banging on the walls most days at all hours of the day and night. I find that the above actions of the tenant have significantly interfered with and unreasonably disturbed the tenant's neighbours and other tenants in the building, contrary to section 47(1)(d)(i) of the *Act*. Pursuant to my above finding, I uphold the One Month Notice and dismiss the tenant's application to cancel the One Month Notice, without leave to reapply.

Section 55 of the *Act* states that 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 find that since the One Month Notice complies with section 52 of the *Act*, the tenant's application to cancel the One Month Notice was dismissed and the One Month Notice was upheld, the landlord is entitled to a two-day Order of Possession.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order 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: June 08, 2022

Residential Tenancy Branch