Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing convened to deal with the tenants' application and amended application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling One Month Notices to End Tenancy for Cause (Notice) issued by the landlord and to recover the cost of the filing fee.

The tenants and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenants received two Notices to end the tenancy. However, neither party submitted a copy of the second Notice. The tenants asserted that they thought they filed the 2nd Notice when they made their amended application.

The hearing proceeded on both Notices, after testimony was taken as to the causes listed, with the understanding that I would allow the tenant to submit a copy after the hearing. The tenant uploaded a copy of the 2nd Notice shortly after the hearing, which contents reflected the testimony of the parties.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support either Notice to end the tenancy?

Should the Notices be cancelled or enforced?

Background and Evidence

The tenancy began on March 1, 2015 and the current monthly rent is $2,786.

The tenants filed copies of various written tenancy agreements between the parties. The tenancy agreement reflects that the rental unit is the main and upper floor of a home, owned by the landlord. The tenancy agreement appears to show that the terms were updated on a yearly basis, with the various tenancy start dates being scratched out and new start dates written in, along with new monthly rent obligations. One page of the written tenancy agreement shows 4 people listed as living in the premises, including the tenant KS listed here.

The landlord has a separate tenant on the property, who lives in the lower rental unit.

In accordance with the Rules, the landlord proceeded first to prove the alleged causes listed on the Notices.

The first Notice was dated April 24, 2022, for an effective move out date of May 31, 2022. The tenant confirmed receiving the Notice on April 24, 2022 and their application was made on April 27, 2022.

The cause listed on the Notice, filed in evidence by the tenant, alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

In the Details of Causes portion of the first Notice, the landlord wrote “Tenant has two cats and one dog on the premises without my consent”.

The second Notice served on the tenant was dated May 28, 2022, for an effective move-out date of June 30, 2022.

The causes listed on the 2nd Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord, breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, and assigned or sublet the rental unit without the landlord’s written consent.

In the Details of Causes section of the 2nd Notice, the landlord wrote the following:

> *Tenant (*tenant name*) subleased two room to (*another person*) and his child.*
>
> *Tenants wear heavy boots in house at around 3 a.m. which created loud noise to people living downstairs.*
>
> *Dogs running around on hardwood floor which is distracting for people living downstairs. No pets are allowed as on the Tenancy Agreement. Tenants had 2 dogs and 2 cats on April 24, 2022.*
>
> [Reproduced as written except for anonymizing personal information to protect privacy]

As the landlord failed to provide sufficient details in the Details of the first Notice, the hearing proceeded on the 2nd Notice.

In summary and relevant part, the landlord said that these tenants are good tenants and they tried together to resolve the issues prior to the hearing. The landlord said that these tenants have been renting for 7 and a half years and the tenant below (A) has been renting for 5 years. The landlord confirmed the house is an older home and has hardwood floors. The landlord confirmed the tenants take very good care of the home. The landlord has inspected the rental unit on occasion and found no damage.

The landlord said that the tenants have two cats and either one or two dogs, which is in violation of the tenancy agreement. The landlord submitted she is okay with the cats, but cannot accept the dogs, due the noise dogs create in the older home.

The landlord submitted that the Notices were in response to the complaints from A, which began recently. The landlord said that the first complaints originated from the tenant, and that A only made recent complaints.

The landlord submitted that A complained about the noise coming from the upper unit, and that it disrupted her sleep. The noises included dogs barking at night and heavy boots on the floor.

A, according to the landlord, is a bus driver who has to get up around 3 or 4 am and has visitation with her daughter every other weekend. The landlord confirmed that when A tried to work matters out with the tenants, A confirmed she initially banged on the walls to alert the tenants about the noise level.

The landlord submitted copies of text messages to her from the tenant and from A.

It is noted that the landlord did not submit evidence prior to the hearing to demonstrate why she believed the tenant had assigned or sublet the rental unit.

Tenant's response –

The tenant confirmed that they have had a dog for about two and half years. The dog was rescued and they saved his life. The tenant denied the dog barks during the night, as he sleeps with them in their bedroom. The tenant said that the dog only barks in response to hearing the doorbell ring, which is often the case when the lower tenant has food delivery items. Other than that, according to the tenant, the dog does not bark.

The tenant denied making the noises alleged by A, as they go to bed between 9 and 10 pm.

The tenant said that A has been very aggressive with them since they tried to collect her portion of the electric and gas bills. The tenant said that they have always paid 100% of the electric and gas bills, although they are supposed to only pay 75% and believed the lower tenant was supposed to pay the other 25%, but understands now A is only

obligated to pay 20% in her tenancy agreement. However, A does not pay that portion at all.

The tenant submitted that A turned off the power one Saturday night, and played around for 4 hours, turning the power off and on. The tenant asserted that he complained to the landlord about this incident and that is when A began making complaints. The tenant submitted that the complaints from A to the landlord about noise and about the dog from A to the landlord only began when they began requesting A's portion of the power bills.

The tenant submitted that he has not sublet the rental unit and has a roommate who helps with the monthly rent. The tenant submitted that the roommate does not have a child living with them, and that the child only visits occasionally. The tenant denied that the child makes much noise and his visits are not very long.

The tenant said A also has pets, including a dog and cat.

Tenant, KS, said that when A texted them, the messages were threatening and abusive. The tenants said they did not send this evidence in as they were not sure it was appropriate to do so.

The tenant was asked why they did not amend their application to include a request for an order cancelling the Notice, the tenant said that they and the landlord had been trying to resolve the matters between them. When this ultimately proved unsuccessful, he believed it was necessary to amend the application.

Landlord's further testimony –

The landlord agreed that A sends her a lot of text messages and that A has difficulty dealing with her daughter. The landlord submitted that A does not have a dog, as the dog is there for the tenant's daughter, and therefore there is no dog living in the lower rental unit full-time permanently. The landlord agreed A has a cat.

The landlord said she did not know until recently that A had not paid her portion of the utility bills.

The landlord asserted that she does not want dogs or subtenants in the rental unit. The landlord said her son has a severe allergy to dogs and one day, the family intends on

living in the residential property. The landlord submitted that when she was sitting in the car on the day she issued the 2nd Notice, debating on whether to give the Notice to the tenants, her son, who came with her, encouraged her to serve it because the tenants had a dog, describing it as pressure.

I asked the landlord if she would like to withdraw her Notices, and she said no, as the tenants disrespected her by having a dog in the rental unit.

Analysis

Where a tenant applies to dispute a Notice, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

1st Notice, dated April 24, 2022 –

I have reviewed the Notice and I find the landlord did not provide any Details of Causes that matched the cause listed. The landlord mentioned the tenant having pets without consent, but I do not find any explanation as to how this relates to the allegation that this was significant interference or an unreasonable disturbance to either an occupant or the landlord.

The landlord is instructed on the Details of Causes to describe what, where, and who caused the issue and included dates/times, names, etc. The landlord, on the Notice form, is informed that this evidence is required or the Notice may be cancelled.

For these reasons, I find that this One Month Notice, without more required and specific details, is insufficient to end a tenancy.

As a result of the above, I **order** that the Notice is cancelled, and it is of no force or effect.

2nd 1 Month Notice dated May 28, 2022 –

Although the tenant did not amend their application to dispute the 2nd 1 Month Notice until August 8, 2022, I find it reasonable that they delayed as they thought the matters would be resolved with the landlord. When that did not prove to be the case, they filed their application.

While this application to dispute the Notice was not made in a timely manner, as required under the Act, I also look to the following:

In *M.B.B v. Affordable Housing Charitable Association, 2018 BCSC 2418*, the court found that the landlord must meet their onus of showing the notice to end tenancy meets the statutory requirements to end the tenancy.

For this reason, I must consider the merits of the landlord's Notice to end the tenancy.

I have reviewed the Notice and while the landlord was more specific as to the now 3 causes listed, I also find the landlord did not provide specific Details of Causes to those causes, as to what, where, and who caused the issue and included dates/times, names, etc.

I, however, will address each of the three causes listed by the landlord.

Tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord –

First of all, I find it important to note that the lower tenant, A, was not present at the hearing to provide witness testimony to offer rebuttal to the tenant's testimony and evidence.

I find the landlord submitted insufficient evidence of this cause. The landlord provided the text messages of the lower tenant, A, which I find was insufficient evidence to support the cause.

Further, I accept the tenant's undisputed evidence that the complaints about noises from the lower tenant to the landlord, by way of text messages, were in retaliation to the tenant's complaints to the landlord about A turning the power off and on for 4 hours one Saturday night. I also find that it is more likely than not the lower tenant is retaliating due

to the tenant asking A to pay her share of the electric and gas bills. The landlord failed to investigate the noise issue, having only received the tenant's text messages and used the lower tenant's unsubstantiated text messages in issuing the Notice.

The parties had lived together for 5 years, with the tenant having a dog for 2 ½ years, without any documented complaints to the landlord from the lower tenant until the tenant complained about the electric and gas bills and the lower tenant turning off the power to the upper unit.

I find unsubstantiated text messages to be insufficient evidence to support that the tenant significantly interfered with or unreasonably disturbed another occupant of the landlord.

Apart from that, the landlord's own evidence, a copy of the text message between her and the tenant, specifically stated *"I know I'd done the procedure wrong and gave you the second notice which was unnecessary".* I find this, in essence, was a way of the landlord cancelling her second Notice.

For the above reasons, I find it more likely than not that this eviction is being sought due to the unproven complaints made from the lower tenant, in retaliation for the tenants rightfully complaining to the landlord about the lower tenant switching the power off and on to the upper tenants' home.

After hearing from both parties, it was not clear to me why the landlord issued these tenants a Notice to end the tenancy for cause. The landlord had nothing but good words to say about the tenants, other than the issue with the dog.

I therefore find the landlord submitted insufficient evidence to support the first cause listed on the Notice.

> *Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so –*

Tenancy Policy Guideline 8 provides the following on Material Terms:

> *A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

I have reviewed the written tenancy agreement filed by the landlord. In reviewing this document, the addendum addresses pets. The clause (d) is written as follows: "The Tenant is allowed the following pets:" In the space following, the handwritten word, "Nil" is written. This clause was initialled only by the landlord, not the tenant.

As written, I find a reasonable interpretation of this clause to be that the tenant is allowed pets, but that at the time of the making of the written tenancy agreement, the tenant did not have pets. I am not convinced that this clause prevents the tenants from having pets as the evidence shows that the landlord has permitted, or at least acknowledged, cats to be in the rental unit and the lower rental unit. I also find that the tenant submitted sufficient evidence to show that they have had a dog in the rental unit for 2 ½ years. For these reasons, I am not convinced that this term is a material term as the landlord confirmed that she was fine with a cat and there was no evidence presented that the landlord has ever attempted to enforce this part of the written tenancy agreement.

From my interpretation of the evidence, the landlord began addressing the matter of the tenant's dog when she began receiving complaints from the lower tenant, who also has a pet, and from pressure from her son.

For these reasons, I therefore find the landlord submitted insufficient evidence to support the second cause listed on the Notice.

Assigned or sublet the rental unit without the landlord's written consent -

I have reviewed Residential Tenancy Policy Guideline 19, which outlines the definitions of both an assignment and a sublet.

An assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

As to subletting, this refers to when the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant.

In the case before me, the evidence clearly shows the tenant has always had a roommate living in the rental unit. While the tenant, ST, was the only tenant listed, the written tenancy agreement show 3 other occupants of the rental unit. The tenant remains living at the rental unit as a tenant. I therefore find that he has not assigned his rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.

I also find the evidence clearly demonstrates that the tenant did not enter into a new agreement with any person occupying the rental unit.

For these reasons, I find the landlord has submitted insufficient evidence that the tenant has assigned or sublet the rental unit without the landlord's written consent.

As a result of the above, I find the landlord has submitted insufficient evidence to support any causes listed on the 1 Month Notice dated May 24, 2022.

Therefore, I grant the tenant's application and **order** the One Month Notices dated April 24, 2022 and May 24, 2022, are cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

I also award the tenant recovery of his filing fee of $100, pursuant to section 72(1) of the Act.

I grant the tenant a one-time rent reduction in the amount of $100 to satisfy their monetary award. The tenant should advise the landlord when they make this deduction and the landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent when the tenant makes the $100 authorized deduction.

Orders for the landlord –

Under section 62(3) of the Act, the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a

landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

After considering the evidence from the hearing, I find it necessary to issue orders to the landlord.

Utilities –

I find it unreasonable that the landlord has placed the burden on the upper tenant of paying for the electric and gas bills for the residential property containing two rental units and requiring the tenant to collect the 25% portion of the bills from the lower tenant. I do not find it is any tenant's responsibility to deal with the utilities for the home in this manner. According to the tenant, he has never received any payments from the lower tenant and has paid 100% of the electric and gas bills since the lower tenant moved in. I find these tenants have no connection to the lower tenant's tenancy agreement and it is not upon the tenant to collect the lower tenant's portion of the electric and gas bills. I find this portion of the tenancy to be the landlord's responsibility.

For these reasons, I **order** the landlord to ***immediately*** put the electricity and gas bills in her name, and then she may collect the appropriate amounts from the tenant, in this case, 75% of each bill. I **order** that the landlord to have transferred the bills from the tenant's name to her name by **September 15, 2022**. Following this, the landlord must provide a copy of each bill to the tenant, requesting the specific proportional amount owed under the written tenancy agreement.

Quiet enjoyment –

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

The undisputed evidence here is that the lower tenant, A, has turned off the power to the tenant's rental unit, on one night in particular, off and on for 4 hours, and I have found that the complaints from A to the landlord were in retaliation to the tenant seeking monetary compensation from A for the utility bills. I find these to be unreasonable disturbances.

While A has complained of dogs barking and heavy footsteps, the rental units are in an older building, according to the landlord. The tenant lives above the lower tenant and there are wooden floors in the upper unit. In this case, A's work hours start early in the morning and are most likely different from the tenant above who might have more traditional work hours.

When tenants occupy a multi-unit wood framed building there are normal sounds or noises that are generated from day to day living which can be heard throughout the building at all hours of the day or night; which all tenants have to deal with. There is also an expectation that tenants compromise when other tenants have family and or friends over occasionally, around birthdays, or holidays or have different work or social schedules.

For these reasons, I find it necessary to and I therefore **order** the landlord to ensure that the tenant is given his legal right to quiet enjoyment, which means to ensure that the tenant is not subject to unreasonable disturbances from the lower tenant, such as power disconnections and noise complaints against the tenant made in retaliation.

Pets in the rental unit –

Although I have determined that the pet clause as written in the tenancy agreement is not a material term, I find it is *a* term of the tenancy agreement, and as such, I find it necessary to address the current pets in the rental unit.

I find that "estoppel" applies in this matter, which prevents a person from insisting on their strict legal rights; where it would be inequitable for that person to do so, given the past dealings that have taken place between the parties. In effect, estoppel is a form of waiver, when person 1 does not enforce their rights and person 2 relies on this waiver.

From the evidence before me, due to the lack of the landlord's enforcement of the pet clause previously, I find the landlord by way of acceptance of the cats and dog, even if by way of lack of regular inspections of the rental unit, for a period of several years, is estopped from enforcing the pet clause as to the tenant's pets currently in the rental unit. What this means is that the dog, with first initial "R", and the cats, currently in the rental unit are now "grandfathered", or made exempt, from enforcement of this term. The tenant is allowed to keep the current pets as described for the remainder of this

tenancy, but the tenant is now informed that in the future, they **must** obtain the landlord's written permission before acquiring any other pets.

Finally, the tenant is at liberty to file an application for dispute resolution to seek monetary compensation from the landlord for 25% of the electric and gas bills for which they have not received reimbursement.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's One Month Notices dated April 24, 2022 and May 24, 2022, are cancelled. The tenancy continues until it may otherwise legally end under the Act.

The tenant has been granted recovery of the filing fee of $100 and he has been granted a one-time rent reduction in this amount.

Orders have been issued to the landlord under authority of section 62(3) of the Act.

Findings have been made in relation to the tenant's pets.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 27, 2022

Residential Tenancy Branch