



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, OLC, FFT**

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;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, the Tenant, and her Community Support Worker 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 on June 10, 2022 by posting the notice on the Tenant's door. The Landlord subsequently served the Tenant with a revised One Month Notice on June 15, 2022 by posting the notice on the Tenant's door. The Tenant Notice of Dispute Resolution Proceeding document confirms receipt of the One Month Notice that was posted on her door on June 10, 2022. I find the One Month Notice was deemed served on the Tenant on June 13, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant stated that she first served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on June 29, 2022 by email (the “NoDRP package”). The Tenant followed up with a personal service of the NoDRP package at the management office. The Landlord confirmed receipt of the NoDRP package on June 29, 2022. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on June 29, 2022, in accordance with Section 71(2)(b) of the Act.

The Landlord personally served the Tenant their evidence on August 11, 2022. The Landlord uploaded a witnessed Proof of Service notice attesting to service of the Landlord’s evidence on the Tenant. The Tenant confirmed receipt of the Landlord’s evidence in the hearing. I find that the Landlord’s evidence was served on the Tenant on August 11, 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 an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?
4. 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 tenancy began as a fixed term tenancy on November 1, 2017. The Tenant stated that the fixed term ended on October 31, 2018, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,352.48 payable on the first day of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the Landlord.

The revised One Month Notice stated the reason the Landlord was ending the tenancy was because there are an unreasonable number of occupants in a rental unit, 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; has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or has put the Landlord's property at significant risk. The effective date of the One Month Notice was July 31, 2022.

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

Repeated Complaints about noise, parties and reports of “many people in the suite partying”. Pest Control attempts 65 times to combat Cockroach problem.

The Landlord offered to settle this matter, but the Tenant was opposed to the offer.

The Landlord states that the Tenant is not keeping in line with the conduct clause in the tenancy agreement. Section 18 states:

18. CONDUCT. *In order to promote the convenience, safety, welfare and comfort of the tenants in the building, the tenants and guests shall not disturb, harass, or annoy occupants of the building or neighbors, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time, and shall maintain quiet between 10 p.m. and 9 a.m. Any Tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment or annoyance, shall indemnify the Landlord for any reasonable costs and losses caused thereby, and may have the tenancy terminated on short notice pursuant to the Act.*

The Landlord states the Tenant is on the first floor and her children listen to music so loudly that the management gets many verbal complaints about the Tenant's unit. Some complaints about the noise level have been received from a third-floor tenant who works from home, and she complains that the music is too much. Noise complaints go back as far as 2019.

In May 2021, the Landlord sent a breach letter to the Tenant about the number of occupants in the unit. The Tenant's tenancy agreement only lists two occupants in the rental unit. An unreasonable number of occupants in the unit was only submitted as a reason on the first One Month Notice, but not on the revised One Month Notice.

On June 22, 2021, security attended the Tenant's rental unit due to the noise issues coming from the suite. The management followed up this incident with a letter dated June 30, 2021. The Landlord testified that the Tenant's alarm clock goes off at 6:00 a.m./6:30 a.m. and no one turns the alarm off.

In April 2022, the occupant above the Tenant was so frustrated by this noise so early in the morning, he went downstairs and banged on the Tenant's door. Management asked this tenant to text them about issues that arise, and the management will deal with it. That tenant has sent text messages to the management beginning in late April saying, *"We have had enough of their music. They have been ignorant since we last spoke. Turning it louder and up and down purposely. We've been putting up with this for far too long and we need to see change happening here."* That occupant attempted to record the music noise from the Tenant's unit, but his recording system did not pick up the bass noise at all.

On May 11, 2022, the Landlord issued another letter to the Tenant about receiving noise complaints. The letter described, *"There are reports of there being several people outside the apartment yelling, hooting and hollering and keeping others awake. This incident happened at 1:30am."*

On May 25, 2022, and June 9, 2022, the management again received text messages about the loud music coming from the Tenant's rental unit.

On June 9, 2022, management personally went to the Tenant's door and was met by the Tenant, her daughter and her guests who were 'blatantly disrespectful' to management. The management asked how many people are residing in the rental unit, and the Tenant told her two adults, and five teenagers. The Landlord reported that one teenager *"came to the door and started yelling at me that it was none of my business who was in the suite and what they are doing because during the day they can do whatever they want. ... again, the girl, yelled at me that it was not fair that they should be able to have people over and have music on during the day. I tried to explain to her that is true but when it is causing other's in the building to complain, we have to take that seriously. ... AS I was leaving the unit, the girls turned the music up really loud. I went back to knock again, they did not answer."*

Management followed up the complaints with another letter dated June 10, 2022 about the constant loud noises, arguing, partying and loud music.

The Landlord testified there are pest control issues in the rental unit. Management noticed pests on the walls and also on the Tenant when speaking with her on June 10, 2022. The Landlord stated that a tenant on the third floor had pests, but they were evicted. The Landlord did not want to comment further until after seeing the Tenant's rental unit.

The Tenant's Support Worker stated the Landlord is saying the whole building is complaining. The alarm clock issue only happened the one time, and residents who share the floor with the Tenant have not complained. The Tenant's Support Worker said garbage left on the Tenant's balcony did not come from the Tenant's unit, but rather someone else placed it there, and the pest control company knows who. It was reported to the management.

The Tenant's Support Worker said that at least two breach letters supposedly delivered by management to the Tenant were never received by the Tenant. Another occupant's attempt at recording music noise from the Tenant's unit was not successful.

The Tenant's Support Worker said the pest control company wrote the Tenant saying that the Tenant's unit is one of the cleanest units in the complex; however, the Tenant did not upload this letter into her evidence. The Tenant's Support Worker testified that the Tenant's rental unit was full of mould, but it was freshly painted when the Tenant moved in, but now the paint is peeling off and the mould is exposed. They state the Landlord knows about this issue.

The Tenant has been looking for a new place to live, but they say the Landlord does not give them a good reference.

The Tenant seeks to have the One Month Notice cancelled. The Landlord is seeking an Order of Possession.

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 outlines how a tenancy can end for cause:

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:*

...

(c) *there are an unreasonable number of occupants in a rental unit;*

(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,*

(ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

(iii) *put the landlord's property at significant risk;*

...

...

(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 Landlord's One Month Notice was deemed served on June 13, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on June 10, 2022 which was within 10 days after the date the Tenant received the One Month Notice.

The Landlord's staff has been dealing with noise complaints from the Tenant's rental unit since 2019. More than one occupant has made complaints against the Tenant. The management, aside from posting notices, has gone to personally speak with the Tenant and has been harassed by occupants in the rental unit. During one of these visits, the

management observed evidence of the pest problem in the rental unit. The Tenant's Support Worker pointed out that the Tenant has not received some of the Landlord's notices, and other occupants were unsuccessful at recording loud music coming from the Tenant's rental unit. Even despite not being able to record bass music noise from the Tenant's rental unit, other occupants have complained about noise from the Tenant's suite.

Based on the testimonies from both parties, I find that the Tenant or a person(s) permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property. I find the Landlord has proven cause on a balance of probabilities that this tenancy must end, and I dismiss the Tenant's application to cancel the Landlord's One Month Notice.

As the Tenant was unsuccessful in her application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
- (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 have upheld the Landlord's One Month Notice, and the Landlord is entitled to an Order of Possession effective two (2) days after service on the Tenant pursuant to Section 55(1) of the Act.

Conclusion

The Landlord's One Month Notice is upheld, and I grant an Order of Possession to the Landlord effective two (2) 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: September 01, 2022

Residential Tenancy Branch