



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent JD (the "landlord").

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on March 25, 2020. The rental building is an assisted and independent living facility for seniors with 73 units. The current monthly rent is \$375.00 payable on the first of each month.

The parties agree that the landlord has issued multiple warning letters to the tenant as well as verbal warnings and ongoing discussions about their conduct and behaviour which has caused disturbance to other residents of the property. The primary complaints are ongoing noise caused by the tenant at all hours as well as some interactions with neighbors. Both parties submitted into evidence numerous warning letters issued by the landlord on multiple occasions about the level, frequency and nature of noise from the tenant's unit.

The landlord submits that the disruption of others by the tenant has been ongoing and unabated despite attempts to work with them to address complaints. The landlord submits that on some occasions the noise and disruption has been so severe that neighbors have called police. The landlord issued the 1 Month Notice dated April 29, 2022 indicating the reasons for the tenancy to end as:

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 a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the conduct of the tenant has not significantly changed since the issuance of the 1 Month Notice and there continue to be complaints and incidents attributable to the tenant's conduct in their suite and on the rental property.

The tenant submits that the issues identified in the landlord's various correspondence are each one-time occurrences that are attributable to such things as accidentally causing an appliance to fall on the floor, needing to remove a door, conflicts instigated by neighbors, and somnambulism due to prescription medication. The tenant says there is no basis for the tenancy to end and that it would be prohibitively costly to move to a new rental property.

Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the parties agree the tenant was served with the 1 Month Notice of April 29, 2022 on April 30, 2022 and filed their application for dispute resolution on May 9, 2022. As such, I find the tenant was within the statutory timeline to dispute the 1 month Notice.

When a tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that either the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, or there has been a breach of a material term that was not corrected within a reasonable time.

Based on the totality of the evidence I am satisfied that the landlord has established a basis for this tenancy to end. I find the undisputed evidence of the parties shows that there has been ongoing issues of noise, disruption and conflict attributable to the tenant. I am satisfied with the volume of the written warnings issued by the landlord that the issues have been plentiful and ongoing and a characteristic of this tenancy rather than isolated events. I find the tenant's explanation for the incidents cited to be of limited persuasive value. While I accept that one may accidentally cause noise once, I find that repeated instances form a pattern of behaviour.

I find, based on the documentary evidence and the undisputed testimony of the parties, that the incidents cited have caused unreasonable noise and disturbance that is inappropriate for a multi-unit building. I accept the evidence of the parties that in addition to noise caused by the tenant they have also issued unwanted and unsolicited notes and correspondence to other occupants which have similarly caused disturbance that would be characterized as unreasonable.

I accept the evidence of the landlord including their testimony and ongoing incident logs that the behaviour of the tenant has not changed since the issuance of the 1 Month Notice and there is ongoing issues of noise, disruption and interference with the rights

of other occupants to quiet enjoyment and freedom from disturbance attributable to the tenant.

I find that the copy of the 1 Month Notice submitted into evidence meets the form and content requirements of section 52 of the Act as it is signed and dated by the agent of the landlord, correctly identifies the parties, the dispute address and indicates the reason for this tenancy to end.

For these reasons I dismiss the tenant's application and grant the landlord an Order of Possession. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises 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: September 26, 2022

Residential Tenancy Branch