



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 20, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated May 13, 2022 (the "One Month Notice");
- an order that the Landlord comply with the Act; and
- an order granting the return of the filing fee.

The Tenant, the Landlord, the Landlord's Counsel F.Y, and the Landlord's witness Y.C. attended the hearing at the appointed date and time.

The Tenant testified that they served the Notice of Hearing to the Landlord by email. The Landlord confirmed receipt. I find the Notice of Hearing was sufficiently served pursuant to Section 71 of the Act. The Tenant stated that they served the Landlord with their documentary evidence by email, on September 22, 2022, seven days before the hearing. The Tenant stated that they were under the impressions that they were the respondent, as they were responding to the One Month Notice which allows for shorter evidence submission deadlines.

The Landlord stated that the Tenant's evidence wasn't received until September 23, 2022 and that the Landlord has not had sufficient time to review, consider, and respond to the Tenant's late evidence.

Preliminary Matters

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5, 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties must have the opportunity to be heard on the question of accepting late evidence.

In this case, I find that the Tenant is the Applicant, given its their Application to cancel the One Month Notice. As such, I find that the Tenant was required to ensure that the Landlord was provided with the Tenant's documentary evidence as soon as possible, but no later than 14 days before the hearing. As the Landlord stated that they received the Tenant's documentary evidence late, and therefore has not had an opportunity to respond to the late evidence, I find that by accepting the late evidence, it would prejudice the Landlord who was unable to respond to the evidence. I find that the Tenant's late evidence will not be considered in this decision.

The Landlord stated that they served the Tenant with their evidence in person hand to hand on September 21, 2022. The Tenant confirmed receipt. As such, I find the Landlord's evidence was sufficiently served pursuant to Section 88 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to an order that the Landlord comply with the Act, pursuant to Section 62 of the *Act*?
3. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
4. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on May 1, 2021. Currently, the Tenant is required to pay rent in the amount of \$1,150.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord's Counsel submits that the Tenant was repeatedly late paying rent. The Landlord's Counsel confirmed that the Landlord had permitted the Tenant to pay their rent late to allow for flexibility during the pandemic and the fact that the Tenant is a student. The Landlord's Counsel states that the Tenant abused the Landlord's kindness which led to the Landlord notifying the Tenant in writing that rent payments need to be paid when due. During the hearing, the Landlord's Counsel confirmed that the Landlord's caution letter to the Tenant was issued on June 29, 2022 after the One Month Notice being issued.

The Landlord's Counsel stated that the Tenant has also significantly interfered with and unreasonably disturbed another occupant and the Landlord. The Landlord's Counsel submits that the Tenant has hosted several gatherings, which has been noisy with loud music playing into the late hours of the night. This has negatively impacted the other occupants who share the rental property with the Tenant.

The Landlord provided several written caution notices advising the Tenant to be respectful of quiet times between 12:00AM to 7:00AM dated September 30, 2021 and

October 26, 2021. The Landlord's Counsel submits that the Tenant continues to cause noise and have parties. The Landlord provided an audio clip of one of the Tenant's parties which was hosted on November 13th, 2021 until 4:30am. The Landlord's Counsel stated that another occupant at the rental property called the Police to report the noise disturbance.

The Landlord's counsel submits that the Tenant has had rude and threatening communication with the Landlord. The Landlord provided a copy of the text messages between the parties in support.

The Landlord's Counsel submitted that the Tenant has also become physical and abusive towards another occupant in the rental unit. The Landlord made the other occupant available at the time of the hearing who confirmed that the Tenant became physical with her on June 23, 2022 and again on August 17, 2022 resulting in injuries.

The Landlord subsequently served the with the One Month Notice by posting it to the Tenant's door on May 13, 2022. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

"Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord"

The Tenant confirmed having received the One Month Notice on May 13, 2022. The Tenant applied to dispute the One Month Notice on May 20, 2022. The Tenant stated that the Landlord has permitted some flexibility relating to late payments of rent.

The Tenant stated that they have received two caution notices, however, they did not relate to their activities, as there are other occupants who reside at the rental property. The Tenant stated that due to their work schedule, going to their room at midnight is not reasonable. The Tenant stated that they have had ongoing issues with the other occupant and that they had expressed their frustrations to the Landlord, who has not taken action.

The Tenant stated that they have only had one gathering and that the recording provided by the Landlord does not provide the full story. The Tenant stated that the music was loud during the day but was quiet at night time.

The Tenant stated that the Landlord has not maintained the yard, the heat doesn't work, and the Landlord does not shovel snow at the rental property, and does not provide notice prior to entering the rental property. The Tenant stated that the Landlord has not addressed their concerns relating to the other occupant. The Tenant stated that they were assaulted by the other occupant.

The Landlord's counsel submits that the Tenant is the bully at the rental property. The Landlord's Counsel referred to another audio recording in which the housemates were trying to resolve their differences and that the Tenant appeared to be the aggressor in the discussion.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*.

With respect to the Landlord seeking to end the tenancy based on repeated late payments of rent, I find that the Landlord had permitted late payments of rent during the tenancy. I accept that the Landlord grew tired of the repeated late payments of rent, therefore, sent a notice to the Tenant on June 29, 2022 requested that rent payments be made when due. I find that the notice to the Tenant from the Landlord came after the One Month Notice. As such, I find that at the time of the One Month Notice being served for late payments of rent, the Landlord had been permitting the late payments. As such, I find that the Landlord is not successful in ending the tenancy for late payments of rent.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on May 13, 2022. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

I find that the Landlord has submitted sufficient evidence to demonstrate that after several written warnings addressed to the Tenant regarding noise and quiet times at the rental property, the Tenant has disregarded the caution notices, and engaged in activities which breach the quiet time regulations at the rental unit, unreasonably disturbing another occupant, requiring Police attendance to gain compliance. I find that the Tenant minimizes their actions and justifies the late-night noise based on their work schedule, disregarding the other occupant's entitlement to quiet enjoyment of rental property.

I accept that there has been ongoing conflict between the Tenant and the other occupant. I make no findings with respect to the physical altercation between them. I find that the communications that the Tenant has sent to the Landlord have been rude, aggressive, and threatening. I find the Tenant has unreasonably disturbed the Landlord with these messages. If the Tenant had grievances with respect to the Landlord not adhering to their responsibilities under the Act or tenancy agreement, the Tenant was at liberty to apply to the Tenancy Branch for an order that the Landlord comply.

I find that the Landlord has provided sufficient evidence to demonstrate that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord to the extent that the tenancy should end. As such, I dismiss the Tenant's Application to cancel the One Month Notice.

When a tenant's application to cancel a notice to end tenancy is dismissed, and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I issue an order of possession in favour of the Landlord. Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective **two (2) days** after service on the Tenant.

Conclusion

The Tenant's Application is dismissed as I have found they have significantly interfered with or unreasonably disturbed another occupant or the Landlord. As such, I grant the Landlord an Order of Possession to be effective **two (2) days** after the Order is served to 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: November 8, 2022

Residential Tenancy Branch