



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Realty Executives Kootenay
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, MNDCT, RR, RP, PSF, OLC**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47 of the Act
- for a monetary order for damage or compensation pursuant to section 67 of the Act
- for an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- for an order requiring the landlord to make repairs to the property pursuant to section 32 of the Act
- for an order to provide services or facilities required by the tenancy agreement or law pursuant to section 62 of the Act
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act

Both parties attended the hearing with the landlord represented by an agent SW, while the tenant SP appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 16, 2022 with an effective date of December 31, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

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.

Preliminary Issues

Amendment

The landlord's agent confirmed the proper name of the landlord, and the style of cause is amended accordingly pursuant to section 64(3)(c) of the Act.

Severance

The tenant applied for several other orders in addition to cancellation of the One Month Notice and compensation directly related to the One Month Notice. These issues are not related to the dispute of the One Month Notice and compensation and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenant has leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to compensation for damages?

Background and Evidence

The tenancy commenced on December 1, 2018 on a month to month basis. Rent is \$875.00 per month due on the first day of the month and the landlord holds a security deposit of \$437.50 in trust. The tenant currently occupies the rental unit.

Landlord's Evidence

The landlord testified that the One Month Notice was served on the tenant for two reasons. The tenant significantly interfered with or unreasonably disturbed another

tenant or the landlord. The tenant caused extraordinary damage to the rental unit or residential property.

The landlord related three main incidents that led to the issuance of the One Month Notice.

The landlord alleged that on November 4, 2022 the tenant called the police in regards to loud noise coming from the unit above him (Unit #305). The landlord provided CCTV footage showing the police arriving at the rental property. The upstairs occupant who was the subject of the tenant's call let the police in, and then the police leaving after a short time. The upstairs occupant called the landlord and was very upset as the police entered his residence and searched it. The landlord stated there was no one other than the upstairs occupant present in the residence and no disturbance was occurring. Immediately after the police left the tenant texted the landlord saying there was once again loud noise coming from Unit #305.

On November 16, 2022 the occupant of Unit #305 sent a text to the landlord describing what happened explaining no one else in his unit at the time the police attended. The text was produced in evidence. The landlord confirmed with the neighbouring units that there was no noise coming from Unit #305 and therefore the landlord concluded that the tenant made a false 911 complaint against the occupant of Unit #305.

On November 9, 2022 the landlord received a complaint from the occupant of the unit below the tenant (Unit #103). She texted the landlord stating that the tenant was making an excessive amount of noise late at night and was loud on the stairs. The landlord served a warning letter on the tenant on November 12, 2022 in respect of this incident and the November 4, 2022 incident related to the upstairs tenant in Unit #305. On November 13, 2022, the landlord received another text from Unit #103 complaining about excessive noise from the tenant's unit at 8:00 am on a Sunday.

The landlord further testified that on November 12, 2022 the occupant of Unit #103 observed construction materials being thrown to the ground from above her. She determined that the tenant was the one throwing the materials. The landlord produced a letter in evidence dated November 22, 2022 from the occupant of Unit #103 describing the November 12, 2022 incident. She stated that the tenant was yelling and screaming, which she described as a daily occurrence. A little later she saw the tenant throwing armfuls of construction materials off his balcony onto the ground below.

The landlord produced a November 14, 2022 email in evidence from the construction company that was renovating the outside of the rental property. The email stated that the construction company would be adding the cost of all of the broken construction materials found on the ground when they arrived at the worksite on November 14, 2022. The email stated that the siding contractor advised him that the construction materials that were on the ground had come from the balcony of the tenant's unit.

The individual from the construction company also described an incident on November 14, 2022 whereby the tenant exited the residence and verbally harassed members of the construction crew. The tenant was asked to leave, and he did not leave. The altercation was witnessed by several employees of the construction company. The construction company employee stated that he would remove his workers from the job site if the harassment continued.

Based on these incidents the landlord issued the tenant the One Month Notice.

Tenant's Evidence

The tenant denied the November 9, 2022 complaint from Unit #103 stating he wasn't using the stairs as described in the occupant's complaint. The tenant also took issue with the wording of paragraph 3 of the November 22, 2022 warning letter stating that he was accused of using speakers, as he does not own speakers. He stated the occupant of Unit #305 had speakers.

The tenant took issue in his evidence with the November 13, 2022 complaint from the occupant of Unit #103, stating that her complaint referred to noise at 8:00 am and that time is outside of the quiet time hours under the RTB Guidelines. The tenant stated that since these noise complaints there have been no further complaints against him, and that the landlord did not give him a reasonable amount of time to rectify the issue.

The tenant implied in his evidence that the issue was with the occupant of Unit #305, and he stated that he has complained about that occupant to the landlord 62 times without any action being taken against that tenant. The tenant stated that he feels that he is being treated unfairly as there have only been a few unjustified complaints against him. He stated that the occupant of Unit #305 has been harassing him, not the other way around.

With respect to the incident with the construction materials, the tenant did not deny removing the construction materials. The tenant testified that he did not throw the

materials off his balcony but carried them downstairs and stacked them up. He provided photos in evidence of the materials stacked up and stated that he was prevented from taking more pictures because he was being intimidated by the construction workers. The tenant stated he was justified in removing the construction materials as the landlord had no business allowing the materials to be stored on his balcony. He stated that he complained to the landlord about the storage of the materials previously, but the landlord ignored his complaints. He also testified that the landlord had the timeline wrong, and he threw the construction materials off the balcony at night, not in the morning.

The tenant alleged that the verbal altercation that occurred with the construction workers was instigated by them, and the construction workers were harassing and threatening him. He felt very intimidated by them and complained to the landlord, but nothing was done by the landlord to resolve the situation. The tenant also alleged that the construction workers placed a threatening sticky note on his door and he provided a photo in evidence of the note.

With respect to the November 4, 2022 incident with the police, the tenant admitted to making the 911 phone call. However, the tenant alleged that the landlord was “cherry-picking” the CCTV footage and should have properly provided the video for an hour prior and an hour after the incident. The still photos are not an accurate representation of what happened and are taken out of context. He speculated that the noise coming from Unit #305 could have been made by other residents of the building attending Unit #305 and the CCTV footage would not have shown anything relevant if it was other occupants of the building in Unit #305.

Analysis

RTB Rules of Procedure 6.6 states, “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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the One Month Notice served on the tenant.

The landlord wishes to end the tenancy for the following reasons:

☐ Tenant is repeatedly late paying rent

☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):

- ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
- ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- ☐ put the landlord's property at significant risk

☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.

☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property

☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.

☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

☒ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

☐ Tenant has not done required repairs of damage to the unit/site/property/park

I find based on the evidence of the parties that the tenant has unreasonably disturbed another occupant of the rental property. The landlord provided CCTV still footage showing the timeline of events of November 4, 2022. Based on the footage and the November 16, 2022 text from the occupant of Unit #305, as well as the landlord's subsequent inquiries of the neighbours, I find that it was unlikely there was disturbance in Unit #305 which warranted the attention of the police on an emergency basis. Further, based on the tenant's evidence of making 62 previous complaints against the Unit #305 occupant, I find that the tenant actively engaged in efforts to disturb the Unit #305 occupant.

Further, I find that the tenant caused extraordinary damage to the rental property by throwing construction materials that belonged to the landlord off his balcony. I prefer the evidence of the landlord particularly the evidence of the unit #103 tenant stating she witnessed the tenant throwing the materials off his balcony. The email from the construction employee states that the construction materials were from the tenant's balcony and were broken and unusable which is further evidence that the construction materials were thrown off the tenant's balcony.

The tenant's application disputing the One Month Notice is dismissed. Additionally, the tenant did not establish based on the evidence that he is entitled to a monetary order for compensation for damages and his application on that ground is dismissed as well.

The One Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is

satisfied, the landlord is entitled to an order of possession effective February 28, 2023 at 1:00 pm.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in 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: March 2, 2023

Residential Tenancy Branch