



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, 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 landlords’ One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47 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 agents DS, KG and SG, while the tenant RB attended and was represented by advocates NG and CR, along with witness PC. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 17, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The tenant testified that they served the landlord at their business office at 3:00pm with the dispute notice and materials. The landlord acknowledged receipt. The tenant acknowledging receiving the landlord’s materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

The hearing was adjourned from January 6, 2023, to May 4, 2023 due to time constraints.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation and/or the tenancy agreement?

Background and Evidence

The tenancy commenced March 1, 2007, on a month-to-month basis. Rent is \$375.00 per month. The landlord holds a security deposit of \$200.00. The tenant still occupies the rental unit. The facility the tenant occupies is an independent living facility.

The landlord testified that the rental unit is located in an independent housing facility. The landlord stated that as of mid August 2018 the landlord heard that the tenant had a new guest attending the rental unit. The landlord also noted that the tenant had put a second bed in the living room. On August 26, 2018, the landlord received reports from other occupants of the rental property of noise disturbances and that the tenant's guest was smoking cannabis on site. The tenant denied to the landlord that this was occurring. The tenant was reminded at that time that she is responsible for her guests. The complaints and concerns were ongoing until the spring of 2019. The landlord provided a letter in evidence from another occupant dated September 25, 2018, complaining about the noise made by the tenant.

On April 2, 2019, the tenant's guest PC came into the office intoxicated and talked about setting beds on fire. The landlord felt that the situation was unsettling, and the landlord deescalated the situation. The landlord contacted the tenant and reminded her that she is responsible for her guests and that her guests cannot be intoxicated in the common areas. The tenant was issued a warning letter April 4, 2019 that stated in part:

This correspondence is follow-up to our conversations today with regards to reports of your guest (Peter) possibly being intoxicated in the common area, behaving in a threatening manner and entering my office before being given permission.

Please be advised that you are responsible for your guest's actions.

It is important for your guests to be respectful of the property, all tenants, staff and other guests, and workers and be advised that behaving in a threatening, aggressive inappropriate manner is not acceptable.

In October 2019 the landlord received reports from their staff that the tenant's guest PC was smoking cannabis on site. This was confirmed by other occupants of the rental property. The landlord received a maintenance request from the tenant in November 2019 to have her unit fan disconnected. In the landlord's experience this is to mask the smell of smoke. The landlord received a written complaint dated January 30, 2020 from another occupant regarding late night noise from the tenant. The landlord provided the written complaint in evidence. On February 7, 2020 the landlord could smell cannabis coming from the tenant's rental unit. The landlord knocked on the door. There was no answer, but the landlord noted that they could hear people inside the rental unit.

From March through May 2020 there were numerous complaints about ongoing noise coming from the tenant's rental unit.

On April 18, 2021 a new occupant complained about noise and being disturbed by the tenant late at night. The complaint was provided in evidence. On April 19, 2021 the landlord contacted the tenant by phone and the tenant was aggressive and swearing. The landlord provided a recording of the phone call in evidence. The landlord issued a warning letter to the tenant. The letter included the following comments:

This letter is follow up to conversation today, during call you called me names, swore at me and I ended the conversation.

Tenant Manual;

It is asked that all Tenants be respectful of other tenants, guests and staff. Be advised that swearing, insults or behaving in an inappropriate manner is not acceptable. You are responsible for you guests actions. It is asked that all tenants be considerate in their interchange in the common areas. Treat your neighbors as you would like to be treated.

*CMHA staff or contractors are **NOT** expected to be subjected to this inappropriate method of behavior or communication and it will not to be tolerated. Should you choose to engage in this type of behavior in the in the future, I am hereby advising you that conversation will immediately be terminated.*

In June 2021 the landlord received complaints about a bad smell from the tenant's unit.

In October 2021 the landlord received more complaints from the other occupants of the rental property regarding noise. Additionally other occupants had witnesses the tenant knocking on other doors in the middle of the night, calling out names and running away. The landlord viewed the security cameras and noted that the tenant and her guest PC were coming and going at very early morning hours. The landlord provided a written

complaint in evidence as well as a warning letter to the tenant dated October 25, 2021 stating:

This letter is follow up to voicemail left for you today, general memo to all October 12 and several reports I have received with regards to noise coming from your unit.

It has been noted that it is when you and your guest arrive at the building late at night.

As per the Tenancy Manual,

NOISE: There will be no loud music and/or other noise from the hours of 11:00 p.m. to 7:00 a.m. and that all tenants be considerate of their neighbours when noise or loud music is a disturbance. It is important that all tenants consider being "good neighbours" to each other. Non-tenants who disturb or violate these noise restrictions will be evicted from the property. Repeat offences will result in written documentation.

On November 19, 2021 the landlord stated that they received more complaints from other occupants regarding noise from the tenant's unit. The landlord issued a further written warning to the tenant dated November 19, 2021 and a 24 hour notice to enter the rental unit. The landlord entered on November 22, 2021 and observed that her rental unit was very unclean and her pet rabbit was in distress. The landlord issued a further written warning to the tenant on November 22, 2021 regarding the fact that the tenant did not appear to be occupying the rental unit as required under the tenancy agreement, the rental unit was unclean, and the tenant had a rabbit in the unit that appeared to be neglected. Both written warnings were provided in evidence. The landlord provided pictures in evidence of the condition of the rental unit.

The landlord stated they issued further warning letters to the tenant on November 23, 2021 and December 13, 2021 regarding noise and disturbances to other tenants. The letters were provided in evidence.

The landlord held an intervention meeting in December 2021, which did not result in an improvement in the tenant's behaviour.

The landlord testified that in January 2022 the landlord had to transfer another occupant of the rental property to a different building due to the continuous disturbance of the tenant. The landlord provided evidence of the transfer.

Further incidents involving noise and disturbances occurred in March 2022 resulting in a request for a meeting between the tenant, her support workers and the landlord to try to resolve the issues. The landlord testified that the tenant was combative and argumentative and did not attend the meeting. A meeting between the landlord and tenant occurred on April 5, 2022. The landlord followed up with a letter to the tenant

April 6, 2022 warning the tenant that she may be issued a notice to end tenancy if her behaviour continues. The tenant did call later and apologized to the landlord.

In July 2022 another tenant moved in and complained about noise.

The landlord testified that on November 17, 2022 there was an incident in the rental property whereby the tenant's guest PC became aggressive and combative with the landlord. PC swore and yelled at the landlord. PC blocked the exit to the rental property and did not allow another tenant to leave. The police were called to intervene. The tenant did not cooperate with the landlord during this incident. The tenant came into the lobby and became aggressive with the landlord and slammed her hand on the elevator button. The landlord provided several videos of the incident with PC in evidence. The landlord testified that this incident was the final incident, it was traumatic to staff, and the decision was made to end the tenancy. The One Month Notice was issued to the tenant after this incident on November 17, 2022.

The landlord stated that there are 23 units in the building. 13 other occupants have complained about the tenant and including staff and contractors, 19 people have complained about the tenant.

The tenant's witness PC testified and stated that he did not drink or use drugs but has a medical condition that causes him to swear and lose control of his behaviour. The tenant's advocate further stated that the tenant was grandfathered on her tenancy agreement and smoking in her unit was permitted. The tenant also addressed one time when PC attended at the building. The tenant's advocate stated that he was not a guest of the tenant at that time. The tenant did not provide a date that PC attended at the building.

The tenant further objected to the landlord redacting documents provided to the tenant but providing unredacted versions to the RTB and referred to the RTB Rules of Procedure which require identical versions of evidence to be provided to the parties. The landlord confirmed that they redacted signatures, names and email addresses of other occupants who wrote complaints.

The tenant admitted to not occupying the rental unit for long periods of time as she stated that she was required to care for PC. She admitted that the rabbit likely made noise while she was gone but she had arranged for care for the rabbit by a neighbour. The neighbour was unable to remove her garbage which is why her rental unit had a bad smell. The tenant also testified that the carpets in the building were removed during

her tenancy and that was the reason for the increased noise. The tenant stated that she made every effort to be quiet.

The tenant admitted to swearing at the landlord in a phone call but stated that she swore because she was frustrated.

One of the tenant's support workers testified that the noise was not coming from the tenant's rental unit but from the units on either side of the tenant. The support worker testified that he could hear the other occupants talking, music, and banging, and the noise is most common from 3:00 pm to 8:00 pm. Many of the noise complaints have been unfairly blamed on the tenant. The tenant's rental unit is disorganized but not messy beyond reason and the tenant is quiet and respectful. The tenant has autism spectrum disorder and the tenant's advocate stated that they weren't sure that the landlord's were clearly communicated to the tenant.

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's One Month Notice states the grounds for issuance as follows:

<input type="checkbox"/>	Tenant is repeatedly late paying rent
<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/>	put the landlord's property at significant risk
<input type="checkbox"/>	Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
<input type="checkbox"/>	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
<input type="checkbox"/>	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.
<input type="checkbox"/>	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.
<input type="checkbox"/>	Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/>	Tenant has not done required repairs of damage to the unit/site/property/park
<input checked="" type="checkbox"/>	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 has produced numerous written noise complaints in evidence. The complaints are from several different occupants. All of the complaints are regarding noise from the tenant or from the tenant's rental unit. In one instance the landlord had to relocate another occupant to a different rental unit. The complaints span a period of over 3 years. The landlords responded to the complaints by providing the tenant with numerous written warnings as well as an in-person intervention where the tenant had her support workers present.

The tenant admitted to swearing at the landlord in a phone call.

The tenant objected to the evidence of the complaints as information had been redacted from the evidence provided by the landlord to the tenant. I find that I can consider the landlord's evidence as the redactions were done to protect private information of the complainants and I will consider the landlord's evidence.

I find based on the evidence that the tenant's behaviour has unreasonably disturbed other occupants of the rental property. The tenant claimed that the issue was that carpets have been removed in the rental property. However I find that the volume of complaints from various other occupants establishes that the tenant is unreasonably loud during hours where the other occupants could reasonably expect to have quiet

enjoyment. I accept and rely on the landlord's evidence that 19 separate people, 13 occupants and the rest staff, have complained about the tenant's behaviour.

The tenant's guest has also caused an unreasonable disturbance to both the landlord and occupants of the residence. The tenant was reminded that she is responsible for her guests. However, even if I do not consider the landlord's evidence regarding the tenant's guest, I find the tenant herself has:

1. Engaged in behaviour that has unreasonably disturbed other occupants, and
2. Refused to participate or cooperate with the landlord to correct her behaviour.

The landlord has a duty under the Act to ensure that all occupants of the rental property have quiet enjoyment of their living space. As such the landlord raised the complaints with the tenant, provided written warnings so the tenant clearly understood the concerns, and followed up with appropriate intervention and supports to assist the tenant. I note that the landlord testified that the rental unit is located in an independent housing facility, however the landlord did work with the tenant to try to resolve the issues. The tenant was not cooperative and did not follow the landlord's direction.

I find that the landlord has satisfied their onus to establish cause to end the tenancy. The tenant's application is dismissed. 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 May 31, 2023 at 1:00 pm.

Conclusion

The landlord is granted an order of possession which will be effective May 31, 2023 at 1:00 pm. 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: May 7, 2023