



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (T): CNC
 (L): OPR-DR, MNR-DR, FFL

Introduction

This hearing concerned the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an order to cancel a One Month Notice to End Tenancy for Cause under section 47 of the Act

This hearing also concerned the Landlord's Application for Dispute Resolution under the Act for:

- an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent under sections 46, 55 of the Act
- a monetary order for unpaid rent under section 46 of the Act
- an order for reimbursement of the filing fee under section 72 of the Act

Landlord J.M. attended the hearing.

No one attended the hearing on behalf of the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified that he received a copy of the Tenant's dispute resolution proceeding package from the Tenant. The Landlord raised no objection as to service of the package.

The Landlord served the proceeding package regarding his application to the Tenant in person on July 10, 2024. The Landlord submitted a Proof of Service form signed by the Tenant and signed by a witness to confirm personal service to the Tenant.

Service of Evidence

The Landlord confirmed the proceeding package included copies of his evidence.

The Tenant submitted no evidence for this hearing other than her statement in the application.

Preliminary Matters

At the start of the hearing, the Landlord testified he had received rent for July 2024 from the Tenant and therefore was cancelling the 10 Day Notice issued July 2, 2024.

Therefore, I dismiss the Landlord's application regarding the 10 Day Notice issued July 2, 2024, without leave to reapply.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

While the Landlord attended the hearing by way of conference call, the Tenant did not. The Landlord who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I have reviewed the evidence, and I have considered the testimony of the Landlord who attended the hearing, but will refer only to what I find relevant to my decision.

Evidence established this tenancy commenced on April 1, 2024 and is for a fixed annual term to March 31, 2025, and thereafter to continue on a month-to-month basis. The Tenant's monthly rent of \$2,000.00 is due on the first day of the month. The Tenant provided the Landlord with a security deposit in the amount of \$1,000.00 which the Landlord continues to hold in trust. A copy of the tenancy agreement was provided in evidence. The addendum to the tenancy agreement provides the Tenant shall not

cause any “disturbing noises,” and states the Landlord with the right to enforce the provision by a notice to end tenancy.

On June 4, 2024, the Landlord issued a One Month Notice to End Tenancy for Cause, as the Tenant’s conduct posed a significant interference with, or unreasonably interfered with, another occupant or the Landlord. The effective date of the Notice was June 30, 2024. The Notice was served to the Tenant by posting to the rental unit door on June 4, 2024. The Tenant’s application states she received the Notice on June 4, 2024. A copy of the Notice was provided in evidence.

The Landlord testified the Tenant resided in the rental unit with her boyfriend and his young child, approximately 6 years of age. The Landlord stated the Tenant is in the basement suite, and there are other tenants residing on the main floor of the residential unit. The Landlord explained that since moving into the rental unit, the Tenant has engaged in alcohol and substance abuse. This has led to the Tenant and her boyfriend raising their voices at the young child, and engaging in loud arguments. The Landlord provided a statement from the next door neighbor who has also complained to him regarding the Tenant’s disturbances as well as a statement from the tenant residing in the main floor unit.

Additionally, local law enforcement officials have been called on numerous occasions because of the Tenant’s loud arguments during the night. The Landlord submitted copies of these reports in evidence. Upon inquiry, the Landlord testified that he has spoken with the Tenant on several occasions regarding her conduct, and the Tenant apologizes but nevertheless continues to engage in loud arguments with her boyfriend and his child to the detriment of the other tenant(s) and neighbor(s). The Landlord states he is of the impression that neither the Tenant nor her boyfriend are currently employed. The Landlord further testified he is unaware if law enforcement has removed the child or levied charges against either the Tenant or her boyfriend. The Landlord stated the disturbances caused by the Tenant are so frequent, his other tenant informed him they may be compelled to relocate.

The Tenant did not attend the hearing. In her application, in her statement to cancel the One Month Notice she stated she could not afford to move and was “trying to make things work.”

Analysis

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

Section 52 of the Act sets forth the requirements for a valid notice to end a tenancy. It provides that the Notice must:

- be signed and dated by the landlord or tenant giving the notice;
- give the address of the rental unit;
- state the effective date of the notice;
- state the grounds for ending the tenancy (with limited exceptions pertaining to a tenant's notice); and,
- when given by the landlord, be in the approved form.

In the event the effective date of the notice is in error, section 53 of the Act deems a correct date. In this case, I find the One Month Notice is deemed to have a correct effective date of July 30, 2024, rather than June 30, 2024.

I find the Tenant timely applied for dispute resolution to cancel the One Month Notice. I further find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

The Landlord provided evidence from the other tenant, a neighbor and several police reports that document a pattern of loud and excessive noise from the Tenant to the detriment of other occupants. The evidence establishes by a balance of probabilities the Tenant disturbs other occupants on a consistent basis and she has not corrected her conduct despite repeated warnings from the Landlord. I find the Landlord credibly testified regarding the Tenant's conduct and disturbances, including the multiple calls to local law enforcement.

I find the Landlord has provided sufficient evidence for the issuance of the One Month Notice on June 4, 2024.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

The Landlord testified that in consideration of the young child in the unit, he requested that the Tenant have until the end of August, 2024, to move-out.

Conclusion

The Tenant's application to cancel the One Month Notice issued June 2, 2024, is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective **August 31, 2024, after service of this Order** on the Tenant. Should the Tenant 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 issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 01, 2024

Residential Tenancy Branch