

DECISION

Introduction

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

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's Cross Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Tenant J.S., Tenant's Witness C.S. attended the hearing for the Tenant

Landlord's Property Manager and Agent H.B., Landlord's Senior Property Manager and Agent J.F. attended the hearing for the Landlord. The Landlord is a corporation.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matters

Address of the Rental Unit

On review of the Tenant's application and the Landlord's cross application, there is a discrepancy between the two applications, specifically that the Tenant's application does not contain the unit number of the rental unit in the address. As stated during the beginning of the hearing, the parties confirmed the rental unit's suite number and address.

As such, I find that is reasonable in the circumstances to amend the Tenant's application to include the unit number of the rental unit under section 64(3)(c) of the Act.

Naming of the Parties

On review of the Tenant's application and the Landlord's cross application and as the Landlord's Agent H.B. declared the legal name of the Landlord, a discrepancy on the naming of the Landlord was discovered. The parties agreed to amend the application to properly reflect the Landlord's legal name.

Under section 64(3)(c) of the Act, subject to the Rules of Procedure, I amended the Tenant's application by correcting the Landlord's full legal name. After the amendment, the names of the parties no longer contain any discrepancies between the two applications.

10 Day Notice for Unpaid Rent or Unpaid Utilities

At the onset of the hearing, the Tenant raised the issue that they mistakenly applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Unpaid Utilities (10 Day Notice). The parties agreed that there is not a 10 Day in play, and the parties agreed to amend the application to remove this issue.

Under section 64(3)(c) of the Act, subject to the Rules of Procedure, I amended the Tenant's application by removing the issue - I want to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities from the Tenant's application.

Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence

Section 89 of the Act states that the Notice of Dispute Resolution must be given in one of the prescribed methods such as registered mail.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Residential Tenancy branch Rules of Procedure Rule 3.5 states that applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with Notice of Dispute Resolution Proceeding and all other associated documents. If applicant fails to demonstrate, director may adjourn, dismiss with or without leave.

The Landlord's Property Manager and Agent H.B. testified that the Landlord did not receive the Tenant's Notice of Dispute Resolution Proceeding. H.B. testified that they did receive some of the Tenant's evidence on September 3, 2024. H.B. affirmed that in total they received sixteen pages of the Tenant's evidence.

The Tenant testified that they sent the Notice of Dispute Resolution Proceeding by United Parcel Service (UPS) on August 23, 2024, and provided a tracking number orally. This UPS tracking number is referenced on the cover page of this Decision. The Tenant testified that they served the Landlord on two separate occasions, specifically August 23, and September 3 of 2024. When questioned which specific documents were served on each date, the Tenant stated that so many pages were served on August 23, 2024, that they do not know.

The UPS website contains a publicly accessible package tracking function, I have entered the UPS Tracking Number provided by the Tenant and the UPS website does not return tracking details with this tracking number, more specifically the query fails.

I note that the Tenant has not completed the declaration of service on the Residential Tenancy Branch Dispute Management System, nor has the Tenant submitted any proof of service documents.

I also note that on review of the amount of evidence the Tenant submitted to the Residential Tenancy Branch, it is clear that the combined evidence is in excess of sixteen pages, and as a result I find that it is more likely than not that the Landlord did not receive all of the Tenant's evidence.

Based on the above, I find it more likely than not that the Tenant did not properly serve the Notice of Dispute Resolution and Evidence in a manner that complies with section 88 and 89 of Act. Accordingly, I exercise my discretion under Rule 3.5 to dismiss the Tenant's application in its entirety, with leave to reapply, and I exercise my discretion under Rule 3.17 to exclude the Tenant's evidence from my consideration.

Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence

The Landlord testified that they served the Notice of Dispute Resolution Proceeding by registered mail on August 15, 2024, and they posted it to the door of the rental unit on August 16, 2024.

The Tenant confirmed that they received the Landlord's Notice of Dispute Resolution Proceeding. The Tenant also confirmed that they received the Landlord's evidence.

Issues to be Determined

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

Is the Landlord entitled to recover the filing fee for their cross application?

Background and Evidence

I have reviewed the admissible evidence, the testimony of the parties, but will refer only to what I find relevant for my decision.

While the Tenant disputed the start date of the tenancy and the value of the security deposit, a copy of the written tenancy agreement was provided showing that this tenancy began on June 1, 2010, and that the Landlord collected a \$342.50 security deposit.

At the time of this hearing the parties agreed that the monthly rent was \$1,016.00 and due on the first day of the month. The parties also agreed that the tenancy is ongoing, and that the rental unit is an apartment.

The Landlord's Property Manager and Agent H.B. testified that the Tenant has a history of abusive behavior to other occupants of the building beginning sometime in 2018.

The Landlord's Agent H.B. submitted a copy of a warning letter addressed to the Tenant dated May 14, 2018. A passage from this letter reads:

"Please be advised that a formal complaint has been received by building management regarding you banging on walls/ceiling and shouting abusive language toward your neighbours. Please note that this behaviour is not acceptable."

The Landlord's Agent H.B. submitted a copy of another letter addressed to the Tenant dated April 2, 2024. A passage from this letter reads:

"Please be advised we have received further complaints regarding excessive noise from your suite in the form of loud shouting and fighting in the suite and in common areas of the building. These disturbances led to the police being contacted, resulting in both you and your guest being removed from the property."

The Landlord's Agent H.B. submitted two videos recorded on July 14, 2024, into the evidence. H.B. elaborated that the videos were recorded by a neighboring occupant whose suite is directly across from the entrance of the rental unit. H.B. stated that the Tenant's neighbor does not feel safe at the property anymore.

The Landlord also submitted a copy of this neighbor's 2-page witness statement which contained a list of ten instances the neighbor documented the Tenant's disruptive behavior between February 2024 to August of 2024. The disruptive behavior documented included acts of screaming, yelling, drunkenness, rude gestures, inflammatory statements, and homophobic comments. I also note that the witness statement indicated that the police were called and on at least one occasion the Tenant was arrested at the rental property. The Tenant did not dispute the fact that the police were called and that they were arrested at the rental property on at least one occasion.

The Landlord's Agent H.B. testified that they served the One Month Notice by registered mail to the rental unit on August 16, 2024. H.B. submitted the Canada Post Tracking Number. The Tracking Number is referenced on the cover page of this Decision.

The Landlord submitted a signed and completed copy of the One Month Notice dated July 19, 2024, the effective date of the One Month Notice is August 31, 2024. The reason cited on the One Month Notice is the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenant testified that they experienced a lot of noise at the rental unit coming from the area above the rental unit. The Tenant agreed that the person in the Landlord's two video recordings is them. The Tenant elaborated that the neighbor who created the recordings frequently harassed the Tenant verbally. The Tenant stated that they only responded by raising their middle finger at the neighbor's door in response to the neighbors provocative and inflammatory language. The Tenant declared that they do not believe they have broken any rules.

Analysis

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

I will emphasize again, Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

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.

As the Tenant disputed this notice on July 24, 2024, and since the Landlord submitted the One Month Notice was served to the Tenant on August 16, 2024, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act.

I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the admissible evidence, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established their claim that they had sufficient

grounds to issue the One Month Notice since the Tenant has significantly interfered with or unreasonably disturbed another occupant.

I find that the Landlord provided a coherent and believable version of events that was corroborated by their documentary evidence, specifically the letter dated April 2, 2024, the two video recordings from July 14, 2024, and the neighbors 2-page witness statement.

I assign significant weight to the Landlord's above three documentary submissions.

Based on the Landlord's evidence, specifically the neighbor's 2-page witness statement, which provided a date of all the instances of the Tenant's disruptions. I find that the disruptive behavior exhibited by the Tenant occurred frequently enough between February 2024 to August of 2024, that it constituted a repeating pattern of significant interference and unreasonable disturbance, and must not be considered as an isolated incidences.

While the Tenant may be of the opinion that they have not broken the rules or the tenancy agreement, and the Tenant may be of the opinion that they had justification to respond to loud noises or unpleasant behavior they received with unpleasant behavior of their own, as shown in the Landlord's video footage, I find that the Tenant did not provide any evidence to demonstrate that they had justification to behave that way, or why the Tenant themselves would be allowed to repeatedly and significantly interfere or unreasonably disturb the other occupants of the building.

Consequently, I am unable to assign any significant weight to the Tenant's submissions. I find that the Tenant provided a significant amount of submissions that were not relevant to the matter at hand and did not contribute to their claim that they are not responsible for significantly interfering or unreasonably disturbing other occupants of the building.

Section 47 of the Act states that a notice to end tenancy served under this section must comply with section 52 of the Act in form and content. I have examined the One Month Notice and I find that it complies with section 52 of the Act, specifically the One Month Notice is signed and dated by the Landlord, it contains the address of the rental unit, it states the effective date of the Notice, it states the grounds for ending the tenancy, and it is in the standard approved form.

Section 55 of the Act states that if a tenant makes an application to dispute a landlord's notice to end tenancy, the director must grant an order of possession if (a) the notice to end tenancy complies with section 52, and (b) if the director dismisses the tenant's application or upholds the landlord's Notice.

I uphold the Landlord's One Month Notice dated July 19, 2024.

Given the length of time since the Tenant's application has been filed, the length of time that these disturbances have gone on for, I find that the Landlord is entitled to an Order of Possession effective seven days after service of the Order on the Tenant.

The Landlord's application requesting for an Order of Possession based on the One Month Notice is granted.

Is the Landlord entitled to recover the filing fee for their cross application?

As the Landlord was successful in their cross application, the Landlord's for authorization to recover the \$100.00 filing fee for the cross application from the Tenant under section 72 of the Act is granted.

Conclusion

The Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the Act is dismissed, with leave to reapply.

The Tenant's application to recover the filing fee is dismissed, with leave to reapply.

The Landlord's application is granted. I uphold the Landlord's One Month Notice.

The Landlord is granted an Order of Possession based on the One Month Notice to End Tenancy for Cause. **The Order is effective seven (7) days after service** of the Order on the Tenant. Should the Tenant or anyone 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.

The Landlord's application to recover the filing fee is granted. I grant the Landlord a Monetary Order in the amount of \$100.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 17, 2024

Residential Tenancy Branch