



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, ERP, RP

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- more time to file their Application to cancel the landlord's One Month Notice to End Tenancy for Cause (the "One Month's Notice");
- the landlord to make emergency repairs for health or safety reasons; and
- the landlord to make repairs to the unit, site or property.

The tenant and the landlord appeared at the teleconference hearing and gave affirmed testimony. Three witnesses, R.B., V.L. and J.O., also gave affirmed testimony on behalf of the landlord. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony, to present witnesses and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

- Is the tenant entitled to more time to file their Application to cancel the landlord's One Month Notice?
- Is the tenant entitled to emergency repairs for health or safety reasons?
- Is the tenant entitled to repairs to the unit, site or property?

Preliminary and Procedural Matters

The landlord and tenant consented to an amendment to the tenant's Application filed November 9, 2016 by adding "cancellation of the landlord's One Month Notice To End Tenancy for Cause" so that this issue could be decided at this hearing. Both parties acknowledged that this was the issue they were prepared to deal with at the hearing.

The tenant withdrew the balance of her Application for emergency repairs; other repairs to the unit; and her claim for more time to file the Application to cancel the One Month Notice. It was acknowledged that the tenant filed her Application within the proper time frame to dispute the One Month Notice.

There were no issues raised by the landlord in regards to service of the tenant's application including service of the tenant's evidence package.

Background and Evidence

The landlord and tenant agreed that a month to month tenancy commenced on June 1, 2016 pursuant to a written tenancy agreement that the tenant signed a few days before moving into the unit. The rent is \$600.00 due on the first day of each month. The tenant has paid the full month's rent for December 2016.

The landlord presented three witnesses R.B., V.L. and J.O., who were excluded until after having given their affirmed testimony.

Landlord's Evidence:

The landlord testified that on June 25, 2016 he sent the tenant a notice advising her of noise complaints made against her by other occupants and warning her that she will receive an eviction notice if the noise continues. The landlord testified that on August 31, 2016 he issued the tenant a One Month's Notice as the noise complaints continued. The landlord believed that it was a friend of the tenant who was staying in the unit who was causing the disturbances. The tenant and landlord worked out an arrangement whereby the tenant's friend would leave the rental unit and the landlord would cancel the notice to end tenancy on the understanding that there would be no more noise complaints.

The landlord testified that during the first week of September after he returned from holidays, three more tenants made noise complaints against the tenant. Two of the tenants who have complained have threatened to end their tenancy due to the noise caused by the tenant.

The landlord issued the tenant a second One Month Notice dated October 30, 2016. The landlord's reason for ending the tenancy is that 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 landlord and tenant agreed that the One Month Notice was served on the tenant by handing it to her in person on October 30, 2016. The tenant made her Application on November 9, 2016.

The landlord testified that the most recent noise complaint was less than one and a half weeks ago made by Witness R.B. The landlord pointed out that this complaint is after the tenant received the most recent One Month Notice.

Witness R.B. testified that he resides directly above the tenant's unit. He complained that he hears loud music, screaming matches and violent arguments at all hours of the day including early morning and late at night. He described the noise as an ongoing problem that is disturbing his ability to sleep. The witness testified that the noise started in July 2016 after the tenant moved in.

Witness V.L. testified that she resides directly below the tenant's unit. She complained of noise from the tenant at all hours of the day and night. The witness testified that she hears fighting, yelling, crying, items thrown and stomping coming from the tenant's unit. The witness testified that the tenant often has four to six people at her place drinking and partying which is noisy. The tenant testified that the loud noise started the first night the tenant moved in. She testified that it is very disturbing and that she can't sleep when the noise happens in the middle of the night.

Witness J.O. testified that he resides across the hall from the tenant. He complained about hearing loud stomping and the slamming of doors. The witness also complained about the noise from drunken guests of the tenant attending at her unit. Witness J.O. testified that the noise started three months ago and that it happens daily at all hours. He complained that he is unable to sleep with the noise disturbances.

Tenant's Evidence:

The tenant testified that her friend who had been staying with her was a problem but that her friend moved out September 1, 2016. The tenant testified that now that her friend is gone there shouldn't be any noise problems. The tenant categorically denies that she is the source of the noise complaints and insists that she is being falsely accused of making the noises. The tenant denies partying and having drunken guests at her unit. The tenant blames the other occupants and guests in the building for the noise,

particularly slamming doors. The tenant testified that lots of people slam doors and blames the other occupants and guests in the building for the noise. The tenant testified that she has eliminated loud noises and that she doesn't party day in and day out. The tenant testified that she quietly lives alone. The tenant also testified that she goes away seven to fourteen days each month.

The tenant submitted two written witness statements. One statement is signed by "a concerned tenant" who is anonymous. The other written statement is from Witness A.J. dated November 8, 2016. Witness A.J.'s written statement addresses mainly collateral issues not before me. However, his written statement supports the tenant's testimony that she is away seven to fourteen days each month. Witness A.J. also asserts that noise complaints have been made against the tenant when she wasn't home and that the building isn't secure allowing for homeless to come and go at will.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

I accept the testimony of the landlord and the three occupants who testified that when the tenant is home, the noise caused by the tenant, or a person permitted on the property by the tenant, has significantly interfered with these occupants' sleep. I find further that the tenant's noise has unreasonably disturbed these occupants.

Witness R.B., who live above the tenant, and Witness V.L., who live below the tenant, share similar complaints about the noise they identify as coming from the tenant's unit at all hours. Witness J.O., who lives across the hall also shared similar noise complaints that he identified were coming from the tenant's unit. All three occupants complained that the noise was interfering with their sleep. I find the disturbance and interference significant as two occupants have reportedly threatened to move out if the noise did not cease.

I did not consider the written statement signed by the anonymous tenant, as no proper identity was provided. I did consider the written statement by the other tenant's Witness A.J. which I did not find very helpful as the information relevant to the issue before me was vague.

I find that the tenant did not provide sufficient evidence to satisfy me that the noise that the other three witnesses/occupants were complaining about was not coming from inside her rental unit as she claimed.

I find that the One Month Notice complies with s.52 of the *Act* and that the landlord served the One Month Notice in accordance with the *Act*. Therefore, I find that the tenant is not entitled to cancellation of the One Month Notice and I uphold the notice to end the tenancy.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession to take effect December 31, 2016 at 1:00 p.m. as the tenant has paid rent for the month of December 2016.

Conclusion

I dismiss the tenant's application to cancel the One Month Notice dated October 30, 2016 and I uphold the One Month Notice.

Pursuant to section 55, I grant an Order of Possession to the landlord **effective December 31, 2016 at 1:00 p.m.**, subject to the tenant being served with this Order. 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 final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 15, 2016

Residential Tenancy Branch