



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEBHARD PARTNERS CAN. LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation*, or the tenancy agreement.

The Tenant and an agent for the Landlord (the “Landlord”) were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package by registered mail, along with copies of the Tenant’s evidence.

The Tenant stated that he did not receive any evidence from the Landlord. The Landlord testified that their first evidence package was sent by registered mail and was unclaimed by the Tenant. The Landlord stated that their second evidence package was provided to the Tenant in person, but was ripped up and thrown into the hallway.

The Tenant stated that he never received any notification regarding the registered mail, and that he did not accept the evidence provided to him by an agent for the Landlord. He stated that he tore it up and placed it outside another rental unit.

Despite not claiming or accepting the Landlord’s evidence, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*. Failure to claim or accept mail does not mean it was not served as required. The evidence of both parties will be considered as part of this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

As stated in Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, unrelated claims may be dismissed. Due to the time provided for the hearing and the importance of resolving a dispute over a One Month Notice, I exercise my discretion to dismiss the Tenant's claim for an Order for the Landlord to comply. The claim is dismissed with leave to reapply, which the parties were informed of during the hearing. This decision will address the Tenant's application to cancel the One Month Notice.

At the outset of the hearing, it was clear that the Landlord had another party present in the room as another voice was heard providing him information. The Landlord was asked to confirm who was present with him, so their name could be recorded as a participant in the hearing. It was explained that all parties needed to be identified, but the Landlord denied that anyone else was with him.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were in agreement as to the following details of the tenancy: the tenancy began on February 1, 2016. Current monthly rent is \$702.00, due on the first day of each month. A security deposit of \$337.50 was paid at the outset of the tenancy.

The Landlord stated that a pet damage deposit of \$50.00 was paid at the outset of the tenancy, which the Tenant stated was not a deposit, but a \$50.00 non-refundable pet fee. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties, and states that \$50.00 was a pet damage deposit.

On September 30, 2018, the Landlord served the Tenant with a One Month Notice by posting it on his door. The One Month Notice, dated September 30, 2018, was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - 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
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Jeopardize a lawful right or interest of another occupant or the landlord

Further details of the cause were provided on the One Month Notice as follows:
'Disturbance of other tenants.'

The effective end of tenancy date on the One Month Notice was stated as October 31, 2018.

The Landlord provided testimony that he gave each tenant in the rental building 48 hours written notice to enter their units for a yearly pest control inspection. The inspection was to take place on May 4, 2018.

When he attended the Tenant's rental unit with pest control on May 4, he stated that the Tenant did not open the door after knocking multiple times and announcing his presence. The Landlord tried to open the door and stated that the Tenant slammed the door shut with his body, causing injury to the Landlord's wrist.

The Landlord stated that the Tenant was then yelling loudly and shouting insults at the Landlord. The Landlord called the police who attended the rental building.

The Landlord also testified as to other times when the Tenant has yelled at and threatened other residents of the building, including knocking continuously on other tenants' doors. The Tenant has also left notes regarding his concern with the Landlord and another resident of the building around the building, on other residents' doors, and in areas throughout the building.

The Landlord stated that the Tenant has been disturbing the occupant who lives in the rental unit about the Tenant. He stated that the Tenant knocks continuously on the door of the upstairs resident and complains to the Landlord and others regarding the behaviour of the upstairs resident. The Landlord stated that he has not had any concern with the upstairs resident and has not received any complaints regarding the upstairs resident, other than from the Tenant.

The Landlord noted that other residents are afraid of the Tenant who shouts in the hallway and reports stories and conversations to the Landlord that have not taken place. The other residents of the building have complained about being disturbed due to the Tenant knocking loudly on the door of the upstairs resident, often at early hours of the morning.

The Landlord posted a letter of warning on the Tenant's door on May 5, 2018. The letter was submitted into evidence and states that the Landlord would like to talk about the disturbances occurring on the residential property. The letter further warns the Tenant that notice to end the tenancy may be provided if the issues are not resolved.

The Tenant testified that he did not receive a warning letter from the Landlord, and if he had, he would have engaged in a conversation with the Landlord about the concerns. The Tenant stated that he is scared of the Landlord, particularly after the event where the Landlord knocked on his door to enter with the pest control company, when the Tenant had not been aware they would be attending his rental unit.

The Tenant stated that during this event, he did not slam the door on the Landlord, but the Landlord hurt himself when trying to get into the Tenant's apartment.

The Tenant submitted personal statements as documentary evidence, as well as excerpts from a letter written to a resident of the building which explains the Tenant's thoughts on the abuse from the Landlord and the upstairs resident. In some of the personal statements written by the Tenant, he outlines how he has been unable to use areas of his rental unit due to the noise from upstairs.

In another personal statement, the Tenant outlines two incidents of emotional abuse he has experienced from the Landlord. The first was when the Landlord yelled at him for having a lawn chair on the grass next to his balcony, and the second incident when he put up a blind on his balcony to keep the sun out.

When the Landlord asked him to take it down, he questioned this and said that the Landlord yelled at him. He submitted photos of other balconies that have attached sun protection blinds on their balconies.

The Tenant testified as to ongoing issues with the resident who lives in the rental unit above his. He stated that the upstairs resident uses a subwoofer speaker at all hours of the day and night, and also constantly drops items on his floor, causing ongoing disturbance to the Tenant. He stated that he hears constant banging and what sounds like 10 lb weights being dropped.

The Tenant stated that there have been times when the noise from upstairs has stopped, but that it always starts up again. He provided testimony that the noise disturbances are causing him to feel tortured and to be very sleep deprived.

The Tenant agreed that he has posted notes in the building, and stated that this was on the doors of other residents of the building, in the Landlord's office, as well as on the bulletin boards by the laundry room and mailboxes. He testified that he posted these notes looking for help due to abuse from the Landlord, as well as the resident of the rental building who lives above the Tenant. He noted that at the times when the notes were posted, he was feeling desperate and in despair about the situation.

The Tenant stated that the only thing he is guilty of is posting notes on other residents' doors, and in the building, as well as knocking on the door of the upstairs resident to get him to stop making noise.

He stated that knocking on his door was the only thing that worked to keep the upstairs resident quiet and allow the Tenant to get some sleep. He further submitted that his actions have been the result of being bullied in the rental building.

The Tenant stated that the upstairs resident brandished a weapon at him and attacked him twice. He further testified that the upstairs resident warned him that he would stomp all day and night.

The Landlord stated that the rental building is an older building in which noise travels easily. He submitted into evidence a letter that explains this, which was signed by the Tenant. The Landlord testified that this letter was signed prior to the Tenant moving in confirming his understanding of respecting the quiet enjoyment of everyone living on the property.

The Landlord submitted over 200 pages of documentary evidence. The evidence includes in part the following:

- A letter from the co-manager of the rental building, stating that the manager is concerned for the safety of the Landlord and the occupants in the building. The letter states that the Tenant seems to be reacting to any noise that comes from the upstairs resident.
- An email dated October 1, 2018 from a resident in the building stating that that Tenant had knocked on the door of the upstairs resident's rental unit every 10 minutes for an hour. The email noted that the knocking was so loud that the whole building could hear.
- An undated letter from a resident of the building stating that there is regular loud banging and confrontations in the hallway resulting from the Tenant. Further states that the Tenant often bangs on the door of the upstairs resident and then goes back down stairs and that this often occurs early in the morning.
- Letter dated October 4, 2018 from a resident of the building. Found letter under the door of their rental unit on September 19, 2018 regarding Landlord and upstairs resident. Notes loud knocking that evening at 3am. States that knocking continued for a week and then another letter was place under the resident's door. Notes that on April 2, 2018 there were at least 5 times the Tenant went up and down the stairs, knocking loudly on upstairs residents' door. Also occurred on October 2, 2018 when the knocking woke the resident up at 3:30 am.
- Four letters from the upstairs resident stating incidents in which Tenant was knocking on his door, and leaving him letters accusing him of physically hurting the Tenant. The upstairs resident states that he has lost quiet enjoyment of his rental unit and tries to be as quiet as possible to avoid any further confrontations. The letters also note that the police have been called numerous times.
- Letter dated October 4, 2018 from a resident of the building stating that the Tenant believes this resident works for the Landlord so drops off letters for this resident to solve his issues with the Landlord and/or upstairs resident. The Tenant told this resident that he will bang on his door every time the upstairs resident makes noise. The letter states that this resident has called the police when the Tenant is banging on his door.

- A letter dated October 29, 2018 from a resident of the building stating that they are concerned for their safety due to the constant banging at night, along with the daily letters placed under their door. Stated a loss of quiet enjoyment and being afraid to answer the door.
- A letter dated November 5, 2018 from a resident of the building stating that they were witness to the Tenant knocking on the upstairs resident's door and called the police due to the Tenant disturbing the peace.
- A letter dated November 6, 2018 from a resident of the building that notes that Tenant is slamming his door shut approximately 10 times a day, including during the evening.
- Over 30 letters from the Tenant that were posted for the residents of the building, and/or provided to the Landlord or the upstairs resident. Some of the letters are over 20 pages long and note abuse from the Landlord and upstairs resident. Other letters ask for the other residents' help in stopping the noise from upstairs. Some of the letters state that the Tenant is experiencing torture and "psychological rape of another human being". Some letters call the upstairs resident a "sociopath" and state that he is revealing "psychopathic tendencies".

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to dispute a One Month Notice. The notice was posted on the Tenant's door on September 30, 2018, and although he was unsure of the exact date he received it from his door, I refer to the deeming provisions of Section 90 of the *Act* which state that the document is deemed received 3 days after posting it on the door.

As the Tenant filed an Application for Dispute Resolution on October 10, 2018, I find that he applied within the timeframe provided by the *Act*. Therefore, the issue before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The parties provided some conflicting testimony regarding the events that occurred leading up to the Tenant being served with a One Month Notice. When two parties provide different accounts of what occurred, it is up to the party with the onus to provide evidence over and above their testimony to establish their claim. Therefore, I look to the documentary evidence of the Landlord.

The Landlord submitted a number of letters/emails from other residents of the rental building outlining their concern with the behaviour of the Tenant and disturbance that is causing loss of their own quiet enjoyment of the rental property.

The letters submitted also corroborate the Landlord's testimony that they have not received any complaints regarding noise from the upstairs resident, other than from the Tenant.

The many letters from the Tenant submitted into evidence by the Landlord also establish the Landlord's testimony regarding the disturbance to others in the rental building through regularly posting notes and letters to other tenants, the Landlord, and/or posting throughout the building. Many of the letters contain information and accusations that may be considered inappropriate or disturbing.

The Tenant agreed that he has posted letters throughout the building and/or to the Landlord and other residents. He also agreed that he has been knocking on the door of the upstairs resident to get the noise to stop.

I find the evidence submitted by the Landlord to be compelling to establish that the other occupants of the rental building are experiencing disturbance and loss of quiet enjoyment due to the behaviour of the Tenant.

As such, I find that the Landlord has met the burden of proof, on a balance of probabilities, to establish that the Tenant is causing significant disturbance and interference of other occupants, as well as jeopardizing the safety of those in the rental building. Therefore, I find that the Landlord had cause under Sections 47(1)(d)(i) and 47(1)(d)(ii) to serve the Tenant with a One Month Notice.

The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply. Instead, I find that the One Month Notice, dated September 30, 2018 is upheld.

Pursuant to Section 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, the landlord must be granted an Order of Possession, if the notice complies with Section 52. Upon review of the One Month Notice submitted into evidence, I find that it complies with Section 52 of the *Act*.

Therefore, pursuant to Section 55, I find that the Landlord is entitled to an Order of Possession. I grant the Landlord an Order of Possession effective on November 30, 2018 at 1:00 pm.

Conclusion

I grant an Order of Possession to the Landlord effective **on November 30, 2018 at 1:00 pm**. This Order must be served on the Tenant. 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 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: November 21, 2018

Residential Tenancy Branch