



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KINDALE DEVELOPMENTAL ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued October 26, 2018. The matter was set for a conference call.

Both the Landlord, the Tenant and the Tenant’s Advocate attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issue to be Decided

- Should the Notice issued on October 26, 2018, be cancelled pursuant to section 47 of the Act?

Background and Evidence

The parties testified that the tenancy began on December 1, 2016, and that the Tenant pays rent in the amount of \$430.00. The parties also agreed that at the outset of the tenancy, the Tenant paid a \$215.00 security deposit.

The Landlord testified that she served the Notice to end tenancy to the Tenant on October 26, 2018, by posting it to the Tenant's door. The Tenant submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- *Tenant or person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*

The Landlord testified that she had been receiving complaints regarding the Tenant and the Tenant's daughter and other guests for over a year. The Landlord testified that she had spoken to the Tenant several times and had issued two warning letters to the Tenant regarding how she is disturbing other occupants of the rental property. The Landlord submitted a copy of both warning letters into documentary evidence.

The Landlord testified that on December 7, 2017, the local police attended the Tenant's rental unit, looking for the Tenant's daughter. When the Tenant or her daughter would not answer the knock on the door, the police kicked in the front door and smashed a window in order to gain access to the rental unit. The Landlord testified that the Tenant's daughter was taken into custody by the police once they entered the rental unit.

The Landlord testified that she was notified of the events of December 7, 2017 by several of the other occupants of the rental property. The Landlord testified that she attended the rental unit the next day to look at the damage and speak with the Tenant. The Landlord testified that she paid to have the door and window repaired, at a cost to the Landlord of \$930.77. The Landlord also testified that she served the Tenant with a warning letter. The Letter contained the details of the events of December 7, 2018, the conversation the Landlord and the Tenant had about appropriate behaviour and advised the Tenant that any further complaints of damage or unreasonable disruption would result in an eviction notice.

The Landlord testified that she received another complaint on April 18, 2018, regarding the Tenant's daughter smashing a window in an attempt to gain access to the rental unit. The Landlord testified that she attended the property to inspect the damage and

caution the Tenant again regarding damage to the rental unit. The Landlord testified that she paid to have the window repaired.

The Landlord testified that on September 17, 2018, she received two telephone complaints from neighbours of the Tenant, stating that the Tenant had been screaming, and slamming her doors, all weekend long. Additionally, the Landlord testified that the complainants stated that the Tenant and her guests had also been banging on the front doors of their rental units.

The Landlord testified that on September 18, 2018 she received another complaint about the Tenant, stating that the Tenant was again yelling and slamming doors in her rental unit all night long and banging on the front doors of other occupants of the rental building.

The Landlord testified that after these last complaints the decision was made to issue the Notice to end tenancy to the Tenant.

The Tenant testified that she does not dispute the Landlord's account of the events that have happened, but that she does dispute receiving the written warning letters the Landlord had submitted into evidence.

The Landlord testified that the warning letters were served to the Tenant via Canada Post.

The Tenant requested a settlement in the hearing, asking the Landlord to withdraw the Notice if she would agree to get a no-contact order for her daughter and commit to ensuring that the daughter no longer attends the rental unit. The Landlord declined the Tenant's request and testified that she wished to end the Tenant's tenancy.

The Landlord testified that she had received six additional disturbance complaints regarding the Tenant since she had issued the Notice to end tenancy; one on September 23, 2018, and five on October 26, 2018.

Analysis

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

I find that the Tenant was deemed to have received the Notice, three days after it was posted to the front door of the rental unit, on October 29, 2018, pursuant to the deeming provisions stipulated in section 90 of the *Act*.

Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until November 8, 2018, to file her application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed her application on November 6, 2018, within the legislated timeline.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me and I find that the parties to this dispute agree that the Tenant has allowed a guest into the rental unit that has unreasonably disturbed the other occupants of the rental property. I also find that the other occupants of the rental property would have been unreasonably disturbed by the actions and behaviour of the Tenant and her guests.

For the reasons stated above, I find that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenant's application to cancel the Notice issued on October 26, 2018.

I find the Notice issued October 26, 2018, is valid and enforceable.

Section 55(1) of the *Act* states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 1:00 p.m. on January 1, 2019. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants' Application to cancel the Notice, dated October 26, 2018, is dismissed.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on **January 31, 2019**. 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: December 14, 2018

Residential Tenancy Branch