



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order to cancel the landlord's 1 Month Notice for Cause ("Notice") pursuant to section 47 of the Act; and
- Authorization to recover the filing fee pursuant to section 72.

The landlord and the tenant attended the scheduled hearing. The tenant testified he served the Notice of Dispute Resolution Proceedings by registered mail on January 6, 2018 and the landlord confirms he received it the following day. Based on the testimonies of the parties I find the landlord was served with the Notice of Dispute Resolution Proceedings on January 7, 2019 in accordance with sections 89 and 90 of the Act.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Preliminary Matter

The landlord sought to correct the effective (move-out) date on the Notice from February 29, 2019 to February 28, 2019 during the hearing. As 2019 is not a leap year, I allowed this in accordance with section 53 of the Act.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause ("Notice") be cancelled?

Background and Evidence

The landlord provided a copy of the Notice that was signed on December 21, 2018. The reason stated on the 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.

This tenancy began approximately 26 years ago. When the tenancy began, a security deposit in the amount of \$225.00 was collected and the landlord continues to hold it. The rental unit is one of eight rental units in an apartment building and the tenant currently pays rent in the amount of \$1,060.00 per month on the first of the month.

The landlord testified that the tenant is well liked however there have been ongoing complaints about the tenant's 'noisy behaviour'. Each time the landlord addresses the noise issues with the tenant, it stops temporarily but recommences very soon thereafter. The landlord has provided a chronology of complaints about the tenant's 'noisy behaviour' supplemented by copies of letters sent to the tenant dating back to 2006 as evidence of the ongoing problem with the tenant.

Most recently on September 23, 2018 a notice was delivered to the tenant asking the tenant to respect his neighbours' right to quiet enjoyment of the property. There were reports of stomping, yelling, door slamming and loud TV noise. An email was received from a tenant in the unit below the tenant's unit to the landlord the following day, on September 24, 2018. Excerpts from the email read, "The tenant has always walked around loud since day one, obviously not knowing of the noise he causes around him...The tv is so loud it echoes through the hallway." An email notice was sent to the tenant on September 25, 2018 to which the tenant responded he will "tone it down and it will not happen again."

The landlord provided an email from a different tenant dated November 6, 2018 describing the tenant as 'extremely inconsiderate of the people living below him.' It goes on to say 'he is consistently loud every single day. At some points in time it is like

he never sits down, he just stomps around his apartment banging on things. It's bizarre.'

The landlord sent another notice to the tenant on November 9, 2018 regarding the noise complaints and they met to discuss it on November 10th. Weather stripping was put on the exterior door of the tenant's unit to help alleviate the noise on November 14th, however more email complaints came in. Copies of the emails were provided. On December 22, 2018, the landlord personally served the tenant with the One Month Notice to End Tenancy for Cause.

The tenant gave the following testimony. Since moving in 26 years ago, his rental unit has not been renovated, unlike all the other units in the building. This tenant has the good fortune of having low rent because he has been a tenant in the building for such a long time. The tenant's position is that the reason there is noise in the building is because it's an old building suffering from age. The tenant describes the floorboards as loose and creaky and his exterior door as not being soundproof, being an interior door that is not original to the unit. A photograph of his door was provided as evidence.

The tenant provided written submissions regarding his position. In his submissions, the tenant indicates that in his 26 years in this address, he has never been accused of wrong doing including excessive noise or partying in late hours. This is a historic first with the underlying excuse to increase rental income. The submission ends with, 'it's obvious the landlord wants another rent increase??'

The tenant believes the supporting evidence from other tenants in the building was gathered by the landlord in an attempt to have the tenant evicted thereby allowing the landlord to find a tenant willing to pay higher rent.

Analysis

The tenant acknowledges he received the Notice on December 22, 2018 by personal service. In accordance with sections 88 and 90 of the *Act*, I find the tenant was duly served with it on that date.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord

bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate 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 has provided multiple copies of messages from a variety of other tenants in the building complaining of noise emanating from the tenant's unit. Pursuant to section 28 of the *Act*, the landlord is obligated to provide quiet enjoyment to all his tenants, so I find it improbable the complaints were solicited by the landlord to assist in evicting the tenant. The landlord provided the tenant with at least three written notices and one face to face meeting regarding the noise issue. I find the tenant's position that he has never been accused of wrongdoing including excessive noise or partying in late hours to be inaccurate.

While the tenant may be correct that the building suffers from creaky floorboards and poor sound insulation, the poor condition of the building does not diminish his responsibility to do everything within his ability to reduce the noise emanating from his unit.

Given this, I find the landlord has proven on a balance of probabilities that the tenant has significantly interfered with or unreasonably disturbed other occupants of the building.

Section 55 of the *Act* states:

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.

Having examined the Notice, I find that it complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must be in writing and (a) be

signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Pursuant to section 55 of the Act I dismiss the tenant's application and grant the landlord an Order of Possession effective on the (corrected) date stated on the landlord's Notice.

Conclusion

I grant an Order of Possession to the landlord effective February 28, 2019 at 1:00 p.m. Should the tenants 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.

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: February 15, 2019

Residential Tenancy Branch