



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated February 27, 2020 ("One Month Notice"),

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In the hearing, the Landlord said that she received the Application and Notice of Hearing documents from the Tenant, but she did not receive any documentary evidence. The Tenant agreed that she did not serve the Landlord with the documents she had uploaded to the RTB, because she said the Landlord already had these documents. I advised the Parties that I could not consider the Tenant's documentary evidence, because the Landlord had not had advance notice of the Tenant's intention to rely on these documents in the hearing. I said I found that this would be administratively unfair to the Landlord, because she had not had notice of the evidence on which the Tenant intended to rely; the Landlord had not had a chance to respond to this evidence.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single

application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I found that not all the claims in the Application are sufficiently related to the One Month Notice to be determined during this proceeding. I, therefore, only considered the Tenant's request to set aside the One Month Notice and her claim for recovery of the \$100.00 Application filing fee at this proceeding. Therefore, the Tenant's claim for a monetary order is dismissed, with leave to re-apply.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires that I consider whether the landlord is entitled to an order of possession of the rental unit. This is the case if (i) I dismiss the application, and (ii) if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act, as to form and content of the One Month Notice.

Issue(s) to be Decided

- Should the One Month Notice be confirmed or cancelled?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2019, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$900.00, and a pet damage deposit of \$900.00.

The One Month Notice is signed and dated February 27, 2020 and has the rental unit address. It was served by being posted on the rental unit door on February 27, 2020, and has an effective vacancy date of April 1, 2020, automatically corrected by section 53 of the Act to April 30, 2020. The grounds for the eviction checked on the One Month Notice were (i) that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; and (ii) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The Landlord also wrote the following under the heading "Details of Cause(s)" on the One Month Notice:

Loss of quiet enjoyment and loss of adequate sleep caused by yelling, swearing,

stomping, and dog barking.

In the hearing, the Landlord reiterated what she said on the One Month Notice. She said:

There's been too much noise: yelling, swearing, stomping, dog barking, early morning visitors; it's affecting my quality of life. I have a disability and depression and it's really affecting my quality of life.

On January 23, 2020, I gave her a letter after speaking to a lawyer and putting all of my concerns down.

The Landlord read the letter in the hearing, saying it had one paragraph:

I am writing to request a significant reduction in noise coming from your suite. I understand that you have a condition; however, it is far worse than you stated it to be. My rest and quiet enjoyment of my home has been and is being severely impacted by the loud noises coming from your suite, including yelling, swearing, stomping, thumping and dog barking every morning and throughout most of the days and evenings of every day. I was hopeful that once the holiday season had passed the level of disturbance would improve, but this has not been the case and I can no longer tolerate the level of noise and being woken up at 0730 every morning from the noise. We discussed that you would be renting the upper floor of the house and that I would be living below. You assured me that the level of noise would be low, but it has been the opposite. This situation is affecting my physical and emotional health to the point that I am not able to function in my life and I am not coping with the amount of disruption. I am writing now to request a significant reduction in noise. Please feel free to contact me if you would like to discuss this.

I asked the Landlord if she noticed any change in the noise level after she delivered this letter to the Tenant, and the Landlord said that there was no change.

The Tenant said:

First, I have never had early visitors in the morning. When I work, I work with people with disabilities like I have, and my son has autism. I awake at 7:30, because I have to be out by 8:30. I'm not home until 5:45. Yes, I have Tourette's, and it has been loud. I apologized. A neurologist said I have stress anxiety; the last place I lived, I wasn't loud. I wasn't told that I would be living in a suite where

the Landlord enters my suite without notice. The anxiety this has brought on has made my Tourette's worse.

I'm looking for a different place that's more suitable, but with the emergency, it's hard to find anything. Yes, my Tourette's includes swearing and loud shouting. It has caused a large amount of problems. I'm trying to find something else.

The Tenant indicated that the way the residential property is set up, and the fact that the Landlord has entered the rental unit without having given notice has increased her stress, which, therefore, increases the effect of her condition. The Tenant lives in an upstairs suite of a house and the Landlord lives in a downstairs suite. There is a stairway between the upstairs and downstairs, but there is no door at the top or bottom of the stairs. Accordingly, the Landlord said that whenever she goes from her suite to a storage room, in which she keeps her freezer, the Landlord's dog is likely to notice and start barking. Further, the Tenant's rental unit includes a storage room downstairs.

The Parties agreed that on one occasion, while the Tenant was away from home, the Landlord said the Tenant's dog was barking "incessantly". As such, the Landlord went upstairs to let the dog out for a pee. The Landlord also noticed that the Tenant had left lights on, and that there was a smell of cigarette smoke in the house. She mentioned these things to the Tenant, which the Tenant said caused her greater stress.

In the hearing, the Tenant said: "I don't want to be walking in to a pitch-black house. It is my responsibility to replace the bulbs. I pay half the [utility] bill. I will replace the bulbs." The Tenant also said she only smokes outside the house.

The Landlord said that the Tenant was aware of the layout of the house when she agreed to sign the tenancy agreement and move in. The Landlord said: "The Tenant never once asked me to put up a door. I explained from the get-go that I go from my suite to my storage room regularly. I try to only go in when they go to bed, and that hasn't made a difference with the dog barking. The dog doesn't bark at night. She barks in the day time and she barks all the time."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for cause:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

Rule 6.6 sets out the standard of proof and the onus of proof in dispute resolution proceedings, as follows:

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Accordingly, the Landlord has the burden of proof in this situation. This is a difficult situation, in that the Tenant's behaviour is related to her health condition, aside from the dog barking. However, based on the evidence before me, overall, I find that it is more likely than not that the Tenant downplayed the degree to which her illness affected her behaviour, and the impact that this behaviour could have on others living in the residential property.

Further, I agree with the Landlord that the Tenant was aware of the layout of the residential property before she agreed to the tenancy. It was, therefore, within her control to determine if this would affect her stress level, once she moved in.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to support the validity of the One Month Notice. I also find that the One Month Notice

issued by the Landlord complies with section 52 of the Act, as to form and content. I, therefore, confirm the One Month Notice.

Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. As the effective vacancy date has already passed, this Order will be effective two days after it is served on the Tenant.

I advised the Parties that the Order of Possession is not likely to be enforced by the British Columbia Supreme Court as of the date of the hearing; however, I could not say when the situation would be back to “normal” in this regard.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice. I dismiss the Tenant’s Application in this regard, as I find that the One Month Notice is valid and effective as of April 30, 2020. Given this result, I also decline to award the Tenant recovery of the Application filing fee.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: May 08, 2020

Residential Tenancy Branch