Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, 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 August 21, 2020 ("One Month Notice), and to recover the $100.00 cost of his Application filing fee.

The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on September 10, 2020; however, the Tenant did not attend the teleconference hearing scheduled for October 9, 2020 at 11:00 a.m. (Pacific Time). The phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the respondent Landlord's agent, L.L., ("Agent"), who indicated that he was ready to proceed.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Respondent Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on October 9, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for minutes, however, neither the Applicant nor an agent acting on his behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application without leave to reapply**.

Preliminary Matters

During the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent confirmed the name of the property management company representing the owner, and he said that he is a property manager for that company and not the Landlord. As such, I amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement, which set out that the fixed term tenancy began on October 1, 2019, ran to March 31, 2020, and then operated on a month-to-month basis. The tenancy agreement states that the Tenant agreed to pay the Landlord a monthly rent of $3,200.00, due on the first day of each month. The Agent confirmed that the Tenant paid the Landlord a security deposit of $1,600.00, and a pet damage deposit of $1,600.00. The Agent confirmed that the Landlord still holds the Tenant's security and pet damage deposits.

The Agent submitted a copy of the One Month Notice that was signed and dated August 21, 2020, and it has the rental unit address. The Agent indicated that the One Month Notice was served by registered mail and by leaving a copy in the rental unit mail box or mail slot on August 24, 2020. It has an effective vacancy date of September 30, 2020, with the grounds being that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Agent submitted copies of complaints from neighbours about, and he said that the Tenant has played loud music in the rental unit after 10 p.m. on multiple occasions. The Agent submitted a copy of a warning letter from him to the Tenant dated July 7, 2020, which the Agent said he gave to the Tenant, which includes the following:

> This is a formal warning regarding the noise issues at [rental unit address]. As you know, excessive noise is a material breach of our tenancy agreement. As a resident of [residential property address], it is your responsibility to comply with strata bylaw and you should not play loud music or TV after 10 PM. Further complaints with evidence of noise ([security company]) may lead to the end of your tenancy.

The Agent submitted a copy of a report from the Landlord's security company dated August 4, 2020 ("Report"). This Report includes a memo stating that on July 24, 2020, the security company received a noise complaint about the Tenant from another tenant of the residential property. This memo states:

> Received a noise complaint from the tenant at suite [complainant's unit number] that loud music and other noise coming from suite [rental unit number]. Spoke with the tenant at suite [rental unit number]. Politely asked to keep the noise down. The individual apologised and told that he will. Ten minutes later received another complaint from the same tenant. Advised her to call police.

In the Landlord's submissions, the Agent said that this tenant has "phoned me multiple times to make complaints". The Agent also indicated that the Tenant's actions constitute a breach of clauses 16 and 49 of the tenancy agreement.

Clause 16 states:

> . . . The tenant or the tenant's guests must not . . . create noise, annoy, interfere with or otherwise disturb the quiet enjoyment of another tenant, occupant, neighbour, or the landlord; nor must any noise or disturbing behaviour be repeated after a reasonable request from the landlord to cease such noise of behaviour. In particular, the tenant or the tenant's guests must avoid loud conversation or other noisy or disturbing behaviour between the hours of 10:10 pm and 9:00 am. . ..

Clause 49 states:

> Excessive noise is a material breach of this agreement.

This page was initialed by the Landlord and the Tenant, and the tenancy agreement signed by the Parties.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a 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:
>
> . . .
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

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.

In this case, the Landlord alleged that the Tenant repeatedly breached a material term of the tenancy agreement, without correcting that behaviour within a reasonable time after the Landlord provided written notice to do so.

I find that the Landlord received complaints from other tenant(s) and/or occupant(s) of the residential property about the Tenant having played loud music after 10 p.m. on multiple occasions. I find that the Landlord sent the Tenant a warning letter dated July 7, 2020, to cease this disturbing behaviour or the tenancy may be ended.

I find from the Landlord's evidence that the Tenant continued to play music loudly, which other tenant(s) found disturbing, such that the Agent and the security company received further complaints from other tenant(s). These complaints occurred at lease two weeks after the Landlord issued the warning letter dated July 7, 2020.

I find that the Tenant was given a reasonable time to correct his disturbing behaviour after having received a warning letter about it; however, I find that the Tenant failed to correct this behaviour and, therefore, failed to comply with a material term of the tenancy agreement.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their 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.

The Tenant's Application is dismissed wholly, as the Tenant did not attend the hearing to explain the merits of his Application.

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 passed, I find that the Tenant is overholding in the rental unit. I, therefore, award the Landlord with an Order of Possession to be served on the Tenant, and which is effective **two days after service** of the Order on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply, as the Tenant or an agent for the Tenant did not attend the hearing to present the merits of the Application. The Respondent Landlord's Agent did attend the hearing.

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 will be emailed to the addresses provided by the Tenant in the Application

and confirmed by the Agent during the hearing.

This Decision is final and binding on the Parties, except as 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: October 19, 2020

Residential Tenancy Branch