Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding YMCA METRO VANCOUVER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On January 29, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to cancel a One Month Notice to End Tenancy for Cause. The matter was set for a participatory hearing via conference call.

The Landlord, her witness and the Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Preliminary Matter – Evidence

The Tenant acknowledged that she did not serve her documentary evidence to the Landlord on time. The Landlord stated that she received the Tenant's evidence package on April 16, 2021 and regardless, agreed to admit the evidence into the hearing.

The Tenant served a secondary evidence package to the Landlord on April 19, 2021 and the Landlord stated that she did not get a full opportunity to review the evidence and requested that this evidence package not be admitted.

Residential Tenancy Branch Rule of Procedure 3.14 states, in regard to evidence not submitted at the time of Application for Dispute Resolution by the Applicant, that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In this case, I find that the Tenant failed to serve the second evidence package pursuant to the Rules of Procedure and as such, find that the evidence is inadmissible and will not be referred to during the hearing.

The Tenant acknowledged that she received the Landlord's documentary evidence.

Preliminary Matter – Landlord's witnesses

At the start of the hearing, the Landlord advised that she had several witnesses to call upon. This hearing ran for 90 minutes and the Landlord only had the opportunity to call one of her witnesses. Rather than adjourn the hearing, I ended the hearing and based my decision on the testimony and evidence presented.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause, dated January 21, 2021 (the "One Month Notice") be cancelled, in accordance with section 47 of the Act?

If the One Month Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Background and Evidence

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on January 2, 2020. The rent is $971.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of $691.00.

The Landlord provided undisputed testimony that she served the One Month Notice to the Tenant, via registered mail on January 21, 2021. The effective (move-out) date on the One Month Notice was for February 28, 2021. The reasons for the end of the tenancy, as stated on the One Month Notice were:

- The Tenant has significantly interfered with or unreasonably disturbed another occupant
- The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that the Tenant and her son have disturbed other occupants of the residential property and have interfered with their quiet enjoyment by regularly causing excessive noise. The Landlord pointed out a clause in the Tenancy Agreement

that provided that the tenant shall not disturb, harass or annoy other occupants or cause any noise to disturb the peaceful enjoyment of other occupants, in particular between the hours of 10:00 p.m. and 9:00 a.m.

The Landlord submitted eight warning letters sent to the Tenant between the dates of April 24, 2020 through to April 12, 2021. The Landlord reviewed many of the disturbances, caused by the Tenant and/or her son, that have occurred throughout the tenancy and have been reported to the Landlord from three separate occupants of the residential property.

The Landlord submitted documentary evidence to demonstrate that the disturbing behaviour, as reported by the occupants, included yelling, banging, loud swearing, stomping on the floor, slamming doors, a barking dog, and the Tenant's son throwing things out the rental unit window and off the deck to a patio area three levels below.

The Landlord submitted the following occurrences as examples of the disturbances:

- April 2020, May 2020, July 2020, August 11, 2020, September 6, 2020; the Tenant's son yelling of profanities while playing video games, both during the day and late at night.
- May 2020, June 2020 August 2020, December 2020; excessive noise from dog barking and scratching on balcony.
- July 2020, August 2020, September 2020, November 2020, January 2021, February 2021, March 2021, April 2021; violent outbursts, yelling, stomping, and banging between 10 p.m. and 3:00 a.m.
- January 2021; garbage and household items thrown from the rental unit onto balconies below.
- April 14, 2021; screaming from rental unit and a flowerpot dropped off the balcony to smash onto the floor of a patio, three levels below. Witness states Tenant was not home rather that her son was present and the one who was screaming.

The Landlord has acknowledged that the Tenant's son has behavioural issues associated to a disability and has attempted to work with the Tenant on strategies to mitigate the disturbances. The Landlord has also offered the Tenant two other rental locations that might assist with the ongoing noise challenges and offered assistance with moving expenses; however, the Tenant did not wish to move from rental unit.

The Landlord testified that the ongoing disturbances have regularly affected more than three other units/occupants of the building and these other occupants have formally shared their feelings of frustration, helplessness and worsening medical conditions as a result of the situation.

The Landlord called witness ET and she testified that she lives below the Tenant and has been very frustrated with the Tenant's noise disturbances that include banging, loud arguments and screaming, banging on walls and noise from the dog. The witness submitted that she has regularly been disturbed by the Tenant and her son and that it is affecting both her and her (the witnesses) son's sleep and well-being.

The Landlord is asking for an Order of Possession to be effective within 2 weeks.

The Tenant testified that the Landlord was advised, prior to the tenancy starting, that the Tenant's son has autism and sometimes has "noisy melt-downs".

The Tenant submitted evidence to support her testimony that she has responded to the warning letters, for example; by closing windows to suppress noise; by adding carpeting and padding to the rental unit to dampen steps and noise; taking courses to help her regulate her son's outbursts; by training the dog; by arranging counselling for her son; and, by adding felt pads to her furniture.

The Tenant stated that she didn't agree with some of the noise complaints and advised that there seems to be some "over-reporting" of noise issues to the Landlord.

The Tenant acknowledged that her son has thrown items from his bedroom and from the deck and that she has been addressing the issue with her son.

The Tenant stated that she has been making a great effort to minimize the noise coming from her unit and that her tenancy should not end based on the low tolerances of her neighbours.

The Tenant said that she did not accept the Landlord's offers to arrange a new rental unit as she wants to stay in the same neighbourhood, the resources for her son are in the area, and that it would be difficult for her son if they had to move.

Analysis

The Landlord has served the One Month Notice on the Tenant based on sections 47(1)(d) and 47(1)(h) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions significantly interfered with or unreasonably disturbed another occupant of the residential property. Furthermore, in relation to section 47(1)(h), that the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the Landlord has given written notice to do so. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the One Month Notice are valid and that the Notice complies with section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with section 55 of the Act.

Upon review of the Landlord's evidence, specifically the multiple and ongoing reports of yelling, slamming and banging originating from the rental unit, I find that the Landlord has established valid reasons for the issuance of the One Month Notice.

As referred to in *Residential Tenancy Policy Guideline 6, Entitlement to Quiet Enjoyment*:

> *"Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment."*

In this case, regardless of the substantial efforts the Tenant has made to mitigate the noise from her unit, I find that the Landlord has proven, on a balance of probabilities, that the disturbances have been frequent and ongoing and that these disturbances have caused long term discomfort and inconvenience for several occupants of the residential property.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

Upon review of the One Month Notice, issued by the Landlord on January 21, 2021, I find that it complies with the requirements set out in Section 52.

I have found that the reasons set out in the One Month Notice are valid and that the One Month Notice is compliant with the Act. As such, I dismiss the Tenants' request to cancel the One Month Notice without leave to reapply.

The Landlord requested an effective date for an Order of Possession to be two weeks after service on the Tenant. As the hearing for this matter was almost 3 months after the Tenant applied for dispute resolution and the Tenant demonstrated her diligence in attempting to abide by the Tenancy Agreement and respond to the letters of warning, and subsequently applied to cancel the One Month Notice, I find it unreasonable to force the Tenant and her son from the rental unit in two weeks. Rather, as the tenancy has to end, I find it reasonable to provide the Tenant at least one month's notice to vacate the rental unit.

As I have dismissed the Tenant's Application to cancel the One Month Notice and the Tenant is still occupying the rental unit; I grant the Landlord an Order of Possession for the effective date of May 31, 2021.

Conclusion

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession to be effective on May 31, 2021 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: April 27, 2021

Residential Tenancy Branch