



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, PSF, LAT, LRE, OLC, FFT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to Section 62(3) of the Act;
3. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act;
4. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
5. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
6. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, her Legal Counsel, the Tenant, and her Legal Advocate attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on February 23, 2022 by posting the notice on the Tenant's door using a bailiff. The Landlord uploaded an Affidavit of Delivery dated February 24, 2022 for this service. The Tenant's Notice of Dispute Resolution Proceeding notes she received the One Month Notice posted on her door on February 23, 2022. I find the One Month Notice was deemed served on the Tenant on February 26, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and some evidence for this hearing on March 3, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord stated she assumed she received it all, as the parties also have another dispute resolution file going. I find that the Landlord was deemed served with the NoDRP package on March 8, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served two packages of her evidence on the Tenant via Canada Post registered mail on May 19, 2022. The Landlord referred me to the Canada Post registered mail receipts and tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenant confirmed receipt of the Landlord's two evidence packages. I find that the Landlord's evidence was deemed served on the Tenant on May 24, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant served her last evidence package on the Landlord via Canada Post registered mail on May 12, 2022. The Tenant referred me to the Canada Post registered mail tracking numbers as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenant's last evidence package was deemed served on the Landlord on May 17, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Preliminary Matters

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant

had indicated different matters of dispute on her application, the most urgent of which is the claim to cancel the One Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant's request to cancel the One Month Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant's other claims are dismissed, with leave to re-apply.

Adjournment

This matter was adjourned after the first set hearing date. The Tenant requested an adjournment to fairly allow time to respond to the Landlord's submissions. Principles of natural justice require that both parties must be provided with an opportunity to present whatever evidence they wish to be considered. After the Landlord finished their submissions, there was less than five minutes for the Tenant to respond.

RTB Rules of Procedure 1.1's objective for residential tenancy hearings is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. I granted an adjournment as the Tenant must be required a fair opportunity to present their case.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on January 1, 2020. The fixed term ended on January 1, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,015.00 payable on the first day of each month. A security deposit of \$500.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed the landlord of the residential property, has seriously jeopardized the health or safety or a lawful right or interest of the landlord; and, has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was March 31, 2022.

Additional details provided by the Landlord in the notice are:

- *The tenant has significantly interfered with and unreasonably disturbed the landlord;*
- *The tenant has seriously jeopardized the health of the landlord;*
- *The Tenant has failed to remove the security cameras installed on the property; and*
- *The tenant's noise disturbances have repeatedly disturbed the Landlord.*

On June 3, 2021, the Landlord reported the Tenant was making (loud sex) noises in the early hours of the day. The Landlord sent a text message to the Tenant as the noise was loud enough to wake the Landlord "numerous times until almost 3 am this morning, and now despite wearing ear plugs you and your loud guest have woken me again! Please keep your voices down." The Landlord reported this loud activity again on June 8, 15, and 27, 2021. The Landlord submitted that these kinds of significant and unreasonable loud noises is a common occurrence from the Tenant.

Legal Counsel points to numerous bylaw complaints made by the Tenant against the Landlord to the city:

- March 12, 2021 - The requester was called. Another message was left stating the numerous issues are not Bylaw violations. ... No further action required.*
- March 16, 2021 - Requester has made numerous attempts to relay [redacted] concern the Business being operated at this address is doing so "illegally" due to having customers inside her house.*
- March 31, 2021 - ... [Landlord] was complying with bylaws and not having clients at home. ... After investigation and conversation*

- with [redacted] and not a bylaw issue. Photos attached.
This file can conclude.
- May 15, 2021 - Requester wants to know exact chemicals [redacted] is using for pesticide which are being used at the residence. [redacted]
- May 21, 2021 - a bylaw officer attended the Landlord's home regarding an herbicide the Landlord purchased in a garden store (Tenant reported to city bylaw office). The Landlord was educated where she can use the product, it was noted that a verbal warning sufficed in the matter, and 'No further action needed'.
- June 7, 2021 - Requester reports that the Landlord frequently waters the rear lawn and her garden via sprinkler system on prohibited days, homeowner cites accidental and or lack of control of her poorly automated sprinkler system as a recurrent excuse. ...
- June 24, 2021 - a bylaw officer attended the Landlord's home, and no one was home. They checked the back yard and front yard. No sprinklers were on. No hose was hooked up to the tap. The bylaw officer issued a notice of watering violation based on the complaint. They informed requester [redacted] as well, Photos attached, "No further action required." July 6, 2021, the file was concluded.
- July 12, 2021 - city bylaw office reported "I spoke with the home owner a verbal warning should have been given, the written warning is cancelled."
- July 15, 2021 - the city attended the Landlord's home, and "advised her regarding noise complaints that were reported against her property. ... nightmare tenant and has been causing multiple noise complaints and causing [the Landlord] grief bringing multiple men into her suite." The bylaw officer advised that they "will speak to supervisors regarding this issue, and will do the best we can to mitigate these issues."

The Landlord submits that the bylaw complaints are of minor incidents and not worth filing with the bylaw office.

In August 2021, the Landlord's general practitioner referred her to psychiatric care for treatment for *'mood instability, anxiety symptoms and worsening insomnia.'* The Landlord uploaded documentary evidence written by the psychiatrist who reported that the Landlord's symptoms worsened, so much so that the Landlord needed to take time off work on several occasions. The psychiatrist's letter reports that the Landlord's friends and family have expressed concerns about her mental health, and her employer observed a decline in the Landlord's workplace performance. The doctor directly attributes the Landlord's psychological distress to *"an ongoing problematic relationship with a renter in [the Landlord's] basement suite ([Tenant's name]), who has been in her suite since January 2020. ... I feel that the current rental arrangement is taking a severe toll on [the Landlord's] mental health, and that a more satisfactory resolution needs to be achieved."*

The Landlord uploaded in documentary evidence a letter written by her employer. The Landlord's employer reported that she has been under tremendous stress which is a *"direct cause of issues [the Landlord] has with a tenant in her home."* The Landlord's employer notes that she has taken stress leave from work on June 8, 11, 2021, July 19, 2021, August 31 – September 6, 2021, December 20-22, 2021, and January 6-20, 2022. The Landlord's employer stated the ongoing stress has caused an appreciable decline in the Landlord's otherwise excellent work record.

The Landlord's former roommate wrote a letter submitted in the Landlord's documentary evidence package. The roommate moved into the residential property around March 2021, and soon after noticed the difficulties the Landlord was experiencing with her downstairs Tenant. This roommate worked from home and reported that the Tenant's dog often barked, and she also described the loud sex noises coming from the Tenant's rental unit which woke up the roommate and the Landlord in the early morning hours.

The roommate wrote that the Tenant took photos of her car and reported it to the police. She told of one time she blew a breaker running her blender, and the Tenant called the police. She said the police showing up was a complete waste of a public servant's time. The Tenant made reports to the bylaw office and the police, both of which the roommate found unreasonable. On June 17, 2021, the roommate came home and found the Tenant verbally assaulting the Landlord outside her home. When the Landlord went inside her home, the Tenant began verbally assaulting the roommate.

Within four months of living with the Landlord, the roommate noticed her not eating as much, and not sleeping well. The roommate told of a time where the Landlord and she

were having a conversation about the Landlord's boyfriend requiring the Landlord to take him to the hospital. A short time after that, the Tenant was parked outside the Landlord's boyfriend's home and when he got up to go back into his home, the Tenant yelled out to him how to take care of his medical problem. The roommate said the only way the Tenant knew about this was if she was listening in on the conversation the Landlord and she had upstairs. The roommate said this is "*STALKING and an INVASION to his PRIVACY as well!!*" The behaviour of the Tenant was the deciding factor for her to move out of the residential property.

On April 30, 2021, the Landlord requested the Tenant to remove her cameras from the Tenant's windows that are pointed to viewing the Landlord's back stairs, backyard, patio area, garden, or property. On August 20, 2021, the Landlord reiterated the removal of the camera located in the Tenant's bedroom window that partially monitors the Landlord's hot tub, stairs, yard, and garden. Finally, on September 16, 2021, the Landlord again asked that the cameras be removed that point at the Landlord's yard, garden, side of her house, and now a camera was placed in the Tenant's vehicle that views the entire front area of the Landlord's house. The Landlord requested the removal of the cameras pointing at areas that are only hers to protect her right to privacy, and because these areas are exclusive for the Landlord's sole use.

The Tenant submits that not every breach results in an eviction. The single event must be so severe that the tenancy needs to end. The Tenant states the Landlord provided no evidence or arguments about the Tenant breaching a material term of the tenancy agreement. The Tenant's position is that she has not breached a material term of the tenancy agreement, and the Landlord's One Month Notice was issued in bad faith.

In April 2022, the Tenant's dog passed away, so the Tenant's dog barking is no longer an issue. The Tenant submits that the Landlord cannot ban dogs from visiting, so in that regard, there is no issue.

The Tenant refers to a text message sent by the Landlord on June 28, 2020 which states:

When you wake up today

I have a few things to share with you

Anything that is not love is fear and you generate some very negative and hostile energy toward me when you've had a lot of alcohol

I was always told “Drunks don’t lie when they are drunk” means your unkind words and actions reveal some unspoken truth...

We will need to talk about it because it is not ok with me

I’m not angry I just want it to stop – because it hurts my feelings

The Tenant stated this text was sent the morning after the Landlord sexually assaulted the Tenant. The Advocate characterizes this text message as a pattern of harassment from the Landlord.

The Tenant submits the Landlord mentions hearing noises of a sexual nature from the Tenant and her guests. The Tenant’s Advocate states the Landlord was recording on the other side of an uninsulated wall, which they submit, fits a pattern of harassment from the Landlord. The Tenant submits that it is the Landlord’s responsibility to properly insulate the rental unit.

The Tenant submits the disagreement comes from both sides of the parties. The Tenant states that she has experienced harassment from the Landlord, and repeated unwanted entries into the rental unit by the Landlord when the Tenant was not home. The Tenant testified that the RCMP prescribed she use cameras because of the nature of the relationship between the Tenant and the Landlord.

It is the Tenant’s position that it is reasonable for her to have cameras pointed to where the Landlord is not allowed to go. She has one camera in her living room window and it points to her front door, the camera in her bedroom window points at her bedroom window, and the last camera is located in a side window and it points at the Tenant’s garden. Crown has approved charges of an offence of fear of injury/damage to person/property against the Landlord. The trial is set for December 2022. Conditions imposed because of this charge are a no contact order except in writing, and no entry into the Tenant’s rental unit except in compliance with the Act.

The Tenant states she has no where else safe or affordable to move into as she has a documented disability and only makes \$441.00 per week.

The Landlord’s reply to the Tenant’s submissions are:

- The One Month Notice was issued for very different reasons as opposed to the previous 2 two month notices;

- The Tenant has not stated or corroborated any physical or mental health harm to herself, and she has not uploaded any evidence of a documented disability;
- The Landlord submits that the text message the Tenant referred to is not evidence that there was a sexual assault by the Landlord on the Tenant, the Landlord states the Tenant is very litigious;
- After that previous email was sent, the parties maintained a cordial relationship, e.g. there were offers of picking up items from Costco, or the Tenant offered to the Landlord to take extra potatoes from the Tenant because she had extra;
- A previous tenant, W, feared the Tenant, he was worried she was going to bring bad claims against him, she was the reason he left his tenancy;
- The Tenant was the reason a roommate of the Landlord left her tenancy with the Landlord;
- The Landlord has suffered physical harm, and mental health harm because of the tenancy with the Tenant;
- The Landlord has uploaded a documented full medical record of the Landlord showing a disproportionate affect on her;
- The Landlord should not be driven to suffer physical and mental harm and endless litigation because of this tenancy;
- The RCMP said the cameras should point inside the Tenant's rental unit, while the camera in the Tenant's bedroom directly points to the outside stairs that go up to the Landlord's deck, it is not pointed inside the Tenant's rental unit;
- The Tenant's camera in her vehicle directly points to the front of the Landlord's house and garage, both areas are exclusively used by the Landlord;
- The Landlord feels her privacy is breached because of the Tenant's use of her cameras;
- The Tenant's use of cameras has the effect of intimidating the Landlord's friends, and they do not visit the Landlord like they used to;
- The Criminal action has changed in the Landlord's favour as the judge and crown both now allow the Landlord access to her backyard/common areas on her property;
- There have been no violations of the peace bond; and,
- The Landlord has no where to go aside from leaving her home;

Analysis

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. Where a tenant applies to dispute

a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Landlord's notice: 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*

...

- (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;*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*

- (a) *not earlier than one month after the date the notice is received, and*
- (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

- (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.*

...

The Tenant was deemed served the One Month Notice on February 26, 2022. I find the One Month Notice complies with Section 52 of the Act. The Tenant applied to dispute the One Month Notice on February 23, 2022 which was within 10 days after the date the Tenant received the One Month Notice.

The Landlord alleged that 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, and ii) seriously jeopardized the health or safety or a lawful right or interest of the Landlord.

The Landlord, and a past roommate complained of the loud sex noises that the Tenant engaged in in the early hours of the day which woke up the other occupant and the Landlord. These events were not a one-time instance, and I find were an unreasonable disturbance to the other occupant and the Landlord. Legal Counsel pointed to several bylaw complaints and police calls made by the Tenant in this tenancy. Many of the bylaw complaints were deemed 'not a bylaw issue', '[t]his file can conclude', or 'No further action needed'. The roommate expressed concern that the Tenant called the police when she blew a breaker, and she correctly cited this as a 'complete waste of a public servant's time'.

I find the Tenant's engagement of city workers on trivial matters a significant interference for the other occupant and the Landlord (as well for the city officials). Although I do not find that the Tenant's use of cameras in the rental unit a breach of a material term of the tenancy agreement, I do find that her location of, at least, two of these cameras to be problematic. The purpose of the cameras is to record happenings inside her rental unit; however, the Tenant has her bedroom camera facing outside the window and recording the Landlord on her back stairs and in the common area of the backyard. Also, the camera situated in her vehicle is breaching the Landlord's privacy while it is filming the front of the residential property and the garage space, both of which are exclusively used by the Landlord.

Many of the Landlord's friends do not come by her home as frequently as they used to because of the Tenant's filming of activities that are not even in the Tenant's space. I find the Tenant's conduct in this regard to be a significant interference in the Landlord's life and the Landlord has proven cause to end this tenancy pursuant to Section 47(1)(d)(i) of the Act.

The Landlord's mental health has suffered greatly. Her psychiatrist states her mood instability, anxiety symptoms and worsening insomnia is caused by the interactions with the Tenant. The Landlord's work opportunities have also been negatively impacted due to these dysfunctional interactions. Where before the Landlord had an excellent work record, now, due to the ongoing stress she has experienced living with the Tenant downstairs, her work has suffered. I find that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord. I find the Landlord has proven on a balance of probabilities cause to end this tenancy pursuant to Section 47(1)(d)(ii) of the Act. I dismiss the Tenant's application to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenant was not successful in her application, I must now consider if the Landlord is entitled to an Order of Possession.

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 previously found that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act and I uphold the Landlord's One Month Notice. I grant an Order of Possession to the Landlord which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application to cancel the One Month Notice is dismissed, and the Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 19, 2022

Residential Tenancy Branch