



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call on August 17 and August 23, 2023, concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing on both scheduled dates and each gave affirmed testimony. The landlord also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy For Cause dated April 25, 2023 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the Act, regulation or tenancy agreement, specifically by allowing the tenant's guest to visit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 1, 2021 and reverted to a month-to-month tenancy after February 28, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$525.00 was payable on the 1st day of each month which has been increased to \$535.00 effective November 1, 2022, and there are no rental arrears. On February 21, 2021 the landlord collected a security deposit from the tenant in the amount of \$262.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is shared accommodation; 3 tenants share common areas and each have their own rooms and their own tenancy agreements. The landlord resides in the upper level of the home, and there is another bachelor suite, separate from the tenants' unit.

The landlord further testified that on April 25, 2023 the tenant was served with a One Month Notice to End Tenancy For Cause, by posting it to the door of the tenant's room. A copy has been provided for this hearing and it is dated April 25, 2023 and contains an effective date of vacancy of May 31, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.

The landlord testified that no illegal activity is alleged, but quiet enjoyment is the part that the landlord deals with.

On February 25, 2022 the tenant advised that she was going to start a home business selling jewelry but never spoke to the landlord about it. Also, parking is not included in the tenancy agreement, but the tenant sent a text message to the landlord indicating that the landlord had promised parking, but the landlord didn't, and the tenant harassed the landlord about that, asking where she is supposed to park. The tenant texts the landlord, even if the landlord is at work, asking the landlord to call the tenant ASAP because there is no place to park. The tenant disturbs the landlord about it. The landlord is a nurse, and the tenant calls about parking saying it's not fair and asks the landlord to talk to who parks there, but the landlord does not know who they are and cannot control it.

Previous tenants who shared the accommodation also had issues with the tenant. It's not an issue that's new. There are constant issues with her and other tenants move out. It's frustrating for the landlord to find new tenants due to the tenant's issues.

The landlord's first witness (AA) testified that she is a tenant of the rental unit, and the tenant brings her boyfriend to the rental unit almost every day. They watch movies and make noise, or cook together in the kitchen and don't clean up. The tenant doesn't lock the door when she leaves and her boyfriend doesn't care to lock it. Her schedule is mostly night shift and the witness wakes up between 12:00 and 3:00 a.m. because of her noises slamming the door and using the sink, waking the witness and it's hard to go back to sleep. That has happened several times, and when the witness gets up it's cold and the door is left open and unlocked. The tenant's boyfriend uses the bathroom, surprising the witness that he is there early in the morning. The witness has to get ready for work.

In November and December, 2022 it started, then in March again after the tenant came back from overseas, slamming doors. Almost every day since the witness started renting in November the boyfriend is there, and the tenant doesn't clean up after him or clean the kitchen after she uses it. The witness has to use the kitchen but has to sweep first, and the tenant saw that. The tenant piles dishes on the sink attracting ants and some flies because the tenant leaves her food in the kitchen, and causing mold even food inside the fridge.

Since the tenant was served with the notice to end the tenancy, she's mad and slamming doors more often.

The landlord's second witness (SP) testified that she is a roommate of the tenant. The tenant's boyfriend is there about 5 times a week, making a mess in the kitchen common area and making noise. The noises include constant U-Tube channel, and phone calls at 2:00 or 3:00 a.m. The witness is a student and goes to school at 8:00 a.m. and works part time.

The tenant and her boyfriend cook together for an hour or so, and in the meantime, the witness feels uncomfortable. The witness hears them laughing and talking late at night between 11:00 p.m. to 1:00 a.m. The witness believes the tenant makes noise purposely, slamming the main door and the bathroom door at midnight, several times after midnight. Heavy cooking takes place from 1:00 a.m. to 3:00 a.m. and using the faucet purposely, which happens always, but got worse after the tenant was served with the notice to end the tenancy. There's a lot of noise at 3:00 a.m. and always slams the door when leaving for work.

On one occasion the tenant got angry and swore at the witness, telling the witness to turn down the noise, but the witness was just using the faucet.

The tenant doesn't do any cleaning at all since the witness started living in the rental unit in July, 2022.

The tenant had asked the landlord to have a meeting to discuss issues and problems, and the witness told the landlord that if the tenant wanted to apologize, the witness would participate, but if not, then the witness didn't want to participate. The witness does not feel safe, and does not want to talk to the tenant.

The tenant testified that the notice to end the tenancy is unreasonable, and the landlord has put a lot of restrictions on the tenant. The tenancy agreement restricts guests, who are not allowed after 10:00 p.m. and no men guests after 10:00 p.m. Additional Information in the tenancy agreement states:

- no visitors passed 10 pm weekdays and weekends;
- no smoking allowed;
- there will be no male tenants allowed; females only;
- laundry is scheduled once per week;
- no sleepovers allowed, visitors must leave before 10 pm.

The second thing, when the tenant's mother wanted to visit, she was not permitted after 10:00 p.m. and had to stay in a hotel. The tenant told the landlord that the tenant's mother wanted to visit and was only going to stay for 2 weeks.

Thirdly, in Chat messages, copies of which have been provided for this hearing, the landlord said that she was only accepting applications for those that are okay with male visitors. In a later Chat message the landlord stated that it's a female shared suite, contradicting her previous message.

After the Notice to end the landlord entered the tenant's room without consent, and without a notice to enter. The landlord said it was an emergency to retrieve a modem, but that's not an emergency.

The landlord wants photographs every time any of the tenant cleans, and the landlord has never mentioned a problem with the tenant's photographs. If the landlord didn't like the tenant's cleaning, the landlord has never said so.

With respect to the allegation of banging, the testimony of the other 2 tenants is inconsistent. Most of the time, the tenant sleeps in the evening. The tenant arrives home from work around 3:00 p.m. or later, after a 12 or 13 hour shift. The tenant starts work at 3:00 a.m. and works 5 days per week. Noise from a shower is natural, as is cooking. The kitchen is not a very big space and the walls are wooden. The tenant doesn't bang stuff, and wouldn't want that to happen to her. The tenant disputes cooking at midnight or 9:00 p.m., she goes to work at 3:00 a.m.

When the tenant asked the landlord to have a sit-down with the other tenants, the tenant didn't want any false allegations. The landlord talked to the other tenants, who said they would if the tenant would apologize. The tenant asked the landlord if that meant the others didn't want to meet, or didn't want to solve the issues. The landlord replied that they wouldn't talk, but didn't pass on that question. They clearly don't want to solve it, they just want the tenant to move out.

SUBMISSIONS OF THE LANDLORD:

Others were not comfortable with the tenant's guests. The tenant's work schedule from 3:00 a.m. to 3:00 p.m. changes at times to evening shifts. The tenant cooks late or makes loud noises. The landlord spoke to the tenant about different schedules and to be mindful of noises. This issue has gone on for 2 years and other tenants have moved out. A warning letter was provided to the tenant on November 2, and nothing is better. It's always the same conversation, telling the tenant that it's about an overall tenancy with other tenants.

SUBMISSIONS OF THE TENANT:

When the tenant received the Notice to end the tenancy, the tenant wanted to know what happened to cause that. The tenant's boyfriend was moving away and came to visit, and used the bathroom. The next day the landlord said guests are not allowed and asked what he was doing in the suite. The landlord doesn't want any guests after 10:00 p.m. which the tenant believes is the reason for ending the tenancy, not cleanliness or illegal activity.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The landlord testified that there is no illegal activity alleged, only quiet enjoyment. Loss of quiet enjoyment is not illegal activity, and therefore, cannot be a reason for ending the tenancy.

In order to end a tenancy for allegations 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 must establish that any interference was significant, or that any disturbance was unreasonable enough to warrant ending a tenancy. Leaving a toilet seat up is not significant. The landlord testified that previous tenants have moved out as a result of the tenant's behaviour. That is significant.

The *Residential Tenancy Act* states:

- 30** (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

Regardless of other tenant's culture or spiritual values, all tenants have the same rights.

The landlord testified that the tenant's boyfriend stays over and they cause disturbances, such as talking late at night, coming in and going out, loud TV, and they are not mindful of the time.

The first witness testified that they watch movies and make noise and cook together without cleaning up. The witness also testified that they slam the door and use the sink waking the witness and it's hard to go back to sleep. Several times around 3:00 a.m. the witness gets up, and it's cold and the door is left open and unlocked. The witness also testified that during November and December, 2022 it started, and started again in March upon the tenant's return from overseas, slamming doors. The witness also testified that the tenant doesn't clean up, uses the kitchen and the witness has to sweep first before using the kitchen, leaving dishes in the sink attracting ants. The food remains left out, becoming moldy, even food inside the fridge. Since the Notice to end the tenancy was issued, the tenant slams the door more often.

The second witness of the landlord testified that about 5 times per week the tenant's boyfriend visited, making a mess in the kitchen and making noise. The witness is a student and goes to school at 8:00 a.m. and works part time, while the tenant and her boyfriend watch the U-Tube channel and makes phone calls at 2:00 or 3:00 a.m. The witness also testified that the tenant purposely makes noise slamming doors at midnight or later. The tenant does heavy cooking from 1:00 a.m. to 3:00 a.m., using the facet

purposely always, but it got worse after the Notice to end the tenancy was issued. The tenant doesn't do any cleaning at all since the witness started living there in July, 2022. The witness also testified that she doesn't feel safe.

I find that the testimony of the witnesses and the landlord are very consistent, and allege inconsiderate behaviour of the tenant, which has been ongoing for several months. I accept that the tenants all have different schedules, but where the disturbances are consistent, I find them to be unreasonable.

It is not for me to determine whether or not the situation improved after the tenant's boyfriend moved away. It is for me to determine whether or not the landlord has established the unreasonable disturbances or significant interference at the time that the Notice was issued, and I find that the landlord has established that.

Therefore, I dismiss the tenant's application to cancel the Notice.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The order must be served on the tenant, which may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: August 29, 2023

Residential Tenancy Branch