



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding GAREB HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC | CNC, OLC

Introduction

This hearing was convened as a result of the Tenant's applications for dispute resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a one month notice to end tenancy for cause dated September 26, 2023 (the "One Month Notice") under section 47 of the Act; and
- an order for the Landlord to comply with the Act, regulations, or tenancy agreement under section 62 of the Act.

The Tenant and the Landlord's representatives CG and SM attended this hearing. The Tenant was assisted by an advocate, CE. The Landlord called three witnesses, BF, SZ, and SG.

The parties confirmed receipt of each other's documents for dispute resolution.

Issues to be Decided

1. Should the One Month Notice be cancelled?
2. Is the Landlord entitled to an order of possession?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, regulations, or tenancy agreement?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's applications and my findings are set out below.

The rental unit is a suite in a fourplex. This tenancy commenced on December 1, 2018 and is month-to-month. Rent is \$595.29 due on the first day of each month. The Tenant paid a security deposit of \$265.00.

Records of the Residential Tenancy Branch indicate that the Tenant submitted two repeated applications in March 2023 regarding the Landlord's entry into the rental unit and authorization to change the locks to the rental unit, as well as an application to dispute a previous one month notice to end tenancy for cause in June 2023. According to a decision of the Residential Tenancy Branch dated July 17, 2023, the parties agreed to have all three applications and the previous one month notice to end tenancy withdrawn.

The Tenant submitted another application in August 2023 regarding repairs to the rental unit, which was heard on September 29, 2023 and adjourned to be continued at a later date.

On September 26, 2023, the Landlord issued the One Month Notice to the Tenant with an effective date of October 31, 2023. The stated reason for ending the tenancy is:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

The One Month Notice contains the following details of cause (portions redacted for privacy):

On Monday September 25th. 2023 [RD] from [company] was in her suite to repair the oven (RTB File [number]), [the Tenant] claimed the oven still wasn't working after he had fixed it in August. When he showed her that the timer for the oven was turned off and that the oven worked, she became verbally abusive. He said it was like a switch had flipped. One minute she was very nice and the next she was screaming and hollering, he wasn't sure if she was going to hit him. [RD] told me he will never go back there as long as she lives there. Nobody deserves to be treated like that. Our plumber has told us the same thing.

After he left she started slamming doors. Disturbing her neighbor who was trying to take a nap at the time. This went on for some time.

[The Tenant] has been warned about her disturbing the neighbors. Her behavior to her neighbors and other people is uncalled for. Everybody deserves to be treated with respect at all times. When something doesn't go her way or we say

something that she doesn't agree with, she becomes very agitated and very verbally abusive. (*sic*)

The Tenant confirmed receipt of the One Month Notice attached to her door on September 26, 2023, and submitted her applications on September 27 and 29, 2023.

The Landlord submits as follows:

- The Tenant significantly interferes with the rights of everyone that lives around her or has anything to do with her. CG is unable to post letters on the Tenant's door without being served with a notice of dispute resolution. The Tenant has submitted four dispute resolution applications. The Tenant had made various false allegations in those applications, including that CG had entered the rental unit illegally, CG had threatened and harassed the Tenant, and that other tenants were posting surveillance and bullying the Tenant.
- On September 25, 2023, CG received a call from the Landlord's appliance repairman RD. According to RD, the Tenant was nice and polite until RD showed her that the oven worked fine, then the Tenant lost it. The Tenant started screaming, shouting, and waving her arms. RD tried to calm the Tenant down, but it only seemed to enrage the Tenant more. At one point RD thought the Tenant was going to hit him, so he grabbed his stuff and left. RD called CG right away and expressed that he will never go back into the rental unit while the Tenant is there. According to RD's invoice, RD tested the heat to factory standards. RD noted possible "operator error" and the customer being "extremely difficult to deal with". RD has been in business for over 25 years and the Landlord had used his services for close to 4 years without issue. Another tenant, BF, heard the Tenant screaming and slamming cupboard doors.
- Two years ago, the Landlord's plumber also refused to return to the rental unit due to the Tenant. Over the years, other tenants have witnessed the Tenant losing it with someone at one time or another, as well as making false accusations with no justification.
- The Tenant was previously issued two written warnings about noise. On March 20, 2023, the Landlord served the Tenant with a warning letter regarding a complaint about loud music on March 17, 2023. BF had texted CG about loud music at 9:10 pm, which was so loud that BF could not think or relax to sleep. BF had knocked on the Tenant's door and the Tenant had refused to answer. According to BF's text messages, the Tenant turned it down for 20-30 minutes and then back up again at 9:51 pm.
- On August 22, 2023, the Tenant was issued a warning letter about feeding birds and loud music. The Landlord provided text messages from BF about reminding

the Tenant twice not to feed the birds and to move the feeders. BF also sent text messages requesting the Tenant to turn her music down at 9:04 pm. In February and April 2022, the Landlord had given notices to all tenants about not feeding the birds and maintaining quiet times from 8:00 pm to 8:00 am. The Tenant was warned that the next time she would receive an eviction notice.

- The Tenant's claims of CG entering the suite and surveillance from other tenants were false. Cigarette smoke had been detected in the building. While other tenants opened their doors, the Tenant would not allow access. The Landlord posted a notice to the Tenant's door. The notice remained on the Tenant's door after a few days, and the Tenant did not respond to calls. CG phoned the police and provided the officer with a backup key to access the unit for a wellness check. The officer said the Tenant was not there and the unit did not seem abandoned.

BF is the Tenant's next-door neighbour. BF was unable to say how often she has trouble sleeping because of the Tenant. BF stated that the Tenant would get up at 5:00 am in the morning and slam cupboard doors. BF explained that she is unable to go back to sleep if woken up. BF stated that the Tenant also likes to put food in the bird feeders. BF described moving the bird feeders one time but finding them moved back to the tree outside her window. The pigeons were tearing up the grounds, flying in BF's window, and leaving a mess everywhere. The Tenant's boyfriend came out and insisted to BF that she was being "silly", which BF reported to the Landlord. BF testified that the Tenant and her boyfriend were playing music at the time, which was loud enough to come through the wall. BF testified that in the morning of September 25, 2023, she heard people talking from the rental unit. BF heard the front door slam and then the Tenant slamming all the cupboard doors. BF testified that the Tenant slams the cupboard doors loudly, which causes BF to jump. BF testified that it was the third time this year that BF had notified the Landlord regarding the Tenant's noise, but it happens more frequently. BF provided a written statement dated October 23, 2023, in which she describes having heard the Tenant slamming kitchen cupboard doors on October 17, 2023, which went on throughout the day.

SZ testified that she had witnessed the Tenant get very upset with a former tenant, LS, approximately four years ago. The Tenant was very explosive and verbally abusive. SZ also witnessed the Tenant having an argument with tenant SG approximately three years ago. SZ denied that she and SG have posted pictures of the Tenant online as alleged. SZ stated that she has not seen the Tenant for three years, does not know the Tenant's routines, and does not know what the Tenant looks like. SZ testified that she did not hear anything on the date of the appliance repair, as her unit faces another side.

SG testified that her kitchen is above the Tenant's bedroom. According to SG, there were not too many disturbances, except for loud music on certain occasions and occasionally a loud bump from the Tenant. SG recalled witnessing the argument between the Tenant and LS. LS had been upset with the Tenant and her boyfriend looking into his window. After that time, the Tenant never spoke to SG. SG denied having posted the Tenant's pictures on social media or having harassed the Tenant. SG does not see the Tenant much. SG stated that she is not in her suite a lot and there could have been things going on that she was not aware of.

In response, the Tenant testified as follows:

- The stove and oven were not working properly. RD came to the rental unit for repairs three times. The first time, RD said the Tenant had a clean place and was a kind person. On the second visit, as RD was leaving, he told the Tenant that he would be stopping by sometime. The Tenant did not understand what RD meant by that. The third time, RD tried to reach the Tenant on a weekend, and suggested that he would come to the rental unit on a Thursday. Then RD called the Tenant on the Monday and said he could come by in the early morning. On Monday morning, the Tenant had her main door open with the screen door locked. The Tenant was on the phone with her friend when she saw RD. The Tenant asked RD to wait twice, but RD had already passed through the locked screen door. The Tenant asked why RD came through the locked screen door, to which RD did not respond. RD walked into the Tenant's kitchen. The Tenant said good morning to RD, to which RD responded: "that's better". Then RD repaired the oven and said it is working. The Tenant told RD that the oven was not working previously. RD stated that the Tenant might have touched a dial, which the Tenant did not agree with. The Tenant had been told that the dial cost \$250.00 so she had not touched it. RD was abusive to the Tenant and was shouting. The Tenant closed her ears and did not hear what he was saying. RD picked up his tools and left. The Landlord did not hear the Tenant's side of the story. The Tenant was unable to get back to the Landlord as she was already issued an eviction notice. The oven is fixed now, but the heating still requires repair.
- LS had been upset about the Tenant's boyfriend and shouted at the Tenant about something that the Tenant did not understand, while the Tenant was re-potting her plants outside. LS later apologized to the Tenant.
- The Tenant kept to herself all these years and has a right to quiet enjoyment. The Tenant has been away from the rental unit. The Tenant does not play loud

music before 9:00 am or after 10:00 pm. The Tenant listens to radio only and does not have internet or TV.

- The bird feeders do not belong to the Tenant. The Tenant stopped feeding the birds after the Landlord wrote to everyone. Another tenant also fed the birds. The feeders have been removed and are no longer an issue.
- Other tenants had said the Tenant was smoking in the suite, which started everything. The Tenant does not smoke. One of the tenants attacked the Tenant about flowers that the Tenant had planted.
- The Tenant does not know where the allegations in the One Month Notice are coming from as the Tenant is a quiet and nice person and keeps to herself. The Tenant has not done anything to disturb the other people's quiet enjoyment.
- The Tenant received letters about smoking and the police attending the rental unit for a wellness check. The Tenant was afraid and concerned. The Tenant gave the police four phone numbers from which the Tenant had received calls between October 2021 and March 2022. The Tenant told the police that the Landlord and two other tenants were trying to harass her. After that, the calls stopped.
- The Tenant can listen to music using headphones and is willing to communicate with the Landlord for repairs through the Landlord's black mailbox as requested.

The Tenant seeks an order that the Landlord comply with the Act regarding the Tenant's right to quiet enjoyment. According to the Tenant's application form, as soon as she asked the repairman a question, he started verbally abusing, shouting at, and threatening the Tenant. The Tenant submits that the repairman tried to touch her, and as soon as he was outside, shouted at the Tenant that she ruined his whole day.

The Tenant's advocate CE offered assurances to work with the Tenant and have support workers assist with some behavioural issues, which are symptomatic of the Tenant's disability. CE argued that the Landlord has not provided sufficient evidence to prove that the Tenant has significantly interfered with and unreasonably disturbed other occupants. CE noted that some of the tenants are presenting incidents from several years ago.

Analysis

1. Should the One Month Notice be cancelled?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 of the Act. I note there is a minor typo in the spelling of the Tenant's name, but the parties did not raise this to be an issue and I do not find this to invalidate the One Month Notice.

I find the Tenant received the One Month Notice on September 26, 2023 and submitted her applications on September 27 and 29 of the Act. I find the Tenant applied within the 10-day deadline under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The cause stated in the One Month Notice for ending the tenancy corresponds to section 47(1)(d)(i) of the Act, which is that the tenant or a person permitted on the residential property by the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property".

In this case, I find the Landlord has established cause for ending this tenancy on the basis that the Tenant has unreasonably disturbed BF, another occupant of the property.

First, I find the rental property is an adult only property and the evidence shows that residents include seniors who have health issues. I find the Landlord had reminded all tenants of quiet hours between 8:00 pm and 8:00 am in April 2022. Based on BF's text messages, I find the Tenant was playing loud music past 9:00 pm on March 17, 2023. I find the Tenant did not answer when BF knocked on her door. I find the Tenant turned

down the music for 20 to 30 minutes after CG called and left a message, but turned the music back up at around 9:51 pm. I find the Tenant disturbed BF again with music after 9:00 pm in August 2023, despite the Landlord's first warning letter. I find the Tenant was cautioned in writing that further disturbances will lead to eviction. I do not find the Tenant to have disputed the Landlord's warning letters regarding noise at the time that the Tenant received them.

Second, I find the Landlord had sent a reminder to tenants in February 2022 about not feeding the birds, as the food was attracting pigeons and leaving behind a big mess. I find the Tenant and/or her boyfriend, a person permitted on the property by the Tenant, were still feeding the birds in August 2023. Based on BF's text messages, I find BF had reminded the Tenant twice and requested the Tenant to move the feeders to a different tree. I find the pigeons were flying into BF's window and causing a mess outside BF's window.

Third, I find the Tenant had disturbed BF by slamming her door and cupboard doors. I find the Tenant had an argument with RD on September 25, 2023. I find the Tenant caused unreasonable noise by shouting and slamming the cupboard doors on this occasion. I also accept BF's evidence that she had heard the Tenant loudly slam her cupboard doors on other occasions, including early in the morning.

I find SG also observed occasional loud music and banging from the rental unit, which is consistent with BF's evidence. I find the impact on BF was likely greater due to the location of BF's suite.

Based on the foregoing, I find the Tenant has unreasonably disturbed BF, another occupant of the building, by playing loud music after hours, feeding the birds in the tree outside BF's window, as well as slamming doors and cupboard doors.

Accordingly, I dismiss the Tenant's claims to dispute the One Month Notice without leave to re-apply. I do not find it is necessary to address all of the other complaints raised by the Landlord.

2. Is the Landlord entitled to an order of possession?

Under section 55(1) of the Act, 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 of the Act in form and content, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with the requirements of section 52 of the Act and having dismissed the Tenant's claims to cancel the One Month Notice, I find the Landlord is entitled to an order of possession under section 55(1) of the Act.

The effective date of the One Month Notice has already passed. As noted in Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may extend the effective date beyond the usual two days provided.

Considering the time of the year, the Tenant's personal circumstances, as well as the length of this tenancy, I find the Tenant will require much more than the standard two days to vacate the rental unit. Accordingly, I grant an order of possession to the Landlord effective 1:00 pm on January 7, 2024, or 3 weeks from the date of this decision.

3. Is the Tenant entitled to an order that the Landlord comply with the Act, regulations, or tenancy agreement?

Under section 62(3) of the Act, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the Act, including an order that a landlord or tenancy comply with the Act, the regulations, or a tenancy agreement.

The Tenant seeks an order for the Landlord to comply with the Act regarding the Tenant's right to quiet enjoyment. Under section 28 of the Act, a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and freedom from unreasonable disturbance.

I find the Tenant's testimony regarding her interaction with RD on September 25, 2023 to be somewhat different from the Tenant's description of the events on her application form. I also find the Tenant's evidence about what had happened to be somewhat unclear. I find it to be unlikely that RD had entered the rental unit through a locked screen door. I also find it unlikely that RD had started verbally abusing the Tenant after simply being asked a question. I find that more likely than not, the Tenant became upset at RD and shouted at RD after being informed that the oven was working and that there was possible operator error. I find that more likely than not, an argument ensued, after which RD left the rental unit and the Tenant was slamming cupboard doors. Under these circumstances, and considering the Tenant's own response in the situation, I do not find the Landlord or RD, as a person performing the Landlord's duty under the Act, to have breached the Tenant's right to quiet enjoyment. Therefore, I dismiss the Tenant's claim under this part without leave to re-apply.

Conclusion

The Tenant's applications are dismissed in their entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm** on **January 7, 2024**. 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 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: December 17, 2023

Residential Tenancy Branch