



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNC

For the landlords: OPC, MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice").

The landlords applied for an order of possession due to alleged cause, a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to documentary evidence timely submitted prior to the hearing, and make submissions to me.

Preliminary matter- At the outset of the hearing, the issue of service of evidence was discussed. The landlord gave evidence that they served the tenants their evidence via registered mail on November 22, 2012; however the tenants denied receiving the evidence or the landlord's hearing package.

The landlord supplied evidence of the registered mail receipt and said that the registered mail envelope was returned to them the day prior to the hearing as it was not collected. The landlord said also that the Canada Post employee returning the mail said that the tenants refused to accept the envelope when they attempted to collect it upon learning of the sender.

I find the tenants were served with the landlord's application and Notice of Hearing and their evidence in a manner complying with section 89 of the Act and I have accepted their submission.

2nd Preliminary matter-The tenants signed into the telephone conference call hearing on two separate lines. The female tenant exited the telephone conference call hearing 22 minutes after it began and did not reappear.

Issue(s) to be Decided

1. Are the tenants entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause?
2. Are the landlords entitled to an order of possession due to alleged cause, for a monetary order, for authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that the tenants moved into the rental unit in mid August 2012, that the official start date of the tenancy listed on the tenancy agreement was September 1, 2012, that monthly rent is \$750.00 and that the security deposit paid by the tenants was \$375.00.

The rental unit is a multi-unit apartment complex.

The landlord submitted evidence that the tenants were served a 1 Month Notice to End Tenancy for Cause (the "Notice"), dated October 31, 2012, by posting it on the tenants' door on that date, listing an effective end of tenancy of November 30, 2012. Section 90 of the Act states that documents delivered by posting on the door are deemed served three days later. Therefore the tenants were considered to have been served the Notice on November 3, 2012.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to December 31, 2012.

The causes as stated on the Notice alleged that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord or put the landlord's

property at significant risk, and jeopardized a lawful right or interest of another occupant or the landlord.

The landlord's relevant evidence included a copy of the Notice, three statements from other tenants in the apartment complex, and a written submission.

In support of their Notice, the landlord submitted that on October 29, 2012, the male tenant, after losing his keys, taped the lock to the backdoor of the apartment complex, preventing it from locking, as reported by another tenant.

The landlord said that taping the backdoor compromised the safety and security of the building and all tenants, which included small children.

The landlord submitted that when she attended the tenant's rental unit to address the situation, she asked another male tenant to go with her as she feared for her safety when speaking to the tenants.

The landlord also contended that the tenants have repeatedly disturbed the quiet enjoyment of other tenants, due to their constant fighting, arguing and banging on the walls. The landlord said that the police have been called regarding the tenants' arguments and that crystal meth was found underneath the tenants' balcony.

In response, the tenant admitted that he taped the back door lock, but that he only did so as he lost his keys and needed to let his family in. The tenant denied any harmful intent, but that it was a mistake.

The tenant also denied engaging in loud or any arguments and denied using drugs.

Analysis

Based on the relevant evidence, and on a balance of probabilities, I find as follows:

Once the tenants made a timely application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk, and jeopardized a lawful right or interest of another occupant or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to prove at least one cause listed on the Notice.

In reaching this conclusion, there is no dispute that the tenant taped the lock to the back door of the apartment complex so that it would not lock, which I find leaves all other tenants' health and safety at significant risk.

I find that the tenant's single act of preventing the back door to the apartment building from locking significantly compromised the safety of all occupants and I therefore find that the landlord has sufficiently proven this cause listed on the Notice.

Additionally, I find the landlord did not unreasonably delay in seeking to end the tenancy for this reason.

I have not considered the other issues on the Notice as I find that the landlord has to prove only one of the causes listed in order to deem the Notice valid.

I therefore find the landlord submitted sufficient evidence to establish that the tenants have seriously jeopardized the health and safety or lawful right of another occupant or the landlord and as a result I dismiss the tenants' application to cancel the Notice, without leave to reapply.

As I have dismissed the tenants' application and have found that the landlords have proven their Notice, I grant the landlords' application and find that the landlords are entitled to an order of possession effective **at 1:00 p.m. on December 31, 2012**, after service on the tenants.

As the landlord said that the tenants do not owe rent, I have not granted their request for a monetary order for \$750.00.

As the landlord was successful in their application, I find the landlords are entitled to a monetary order in the amount of \$50.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

I dismiss the tenants' application, without leave to reapply.

I grant the landlords a final, legally binding order of possession, effective at 1:00 p.m. on December 31, 2012, which is enclosed with the landlords' Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$50.00.00, which I have enclosed with the landlords' Decision.

Should the tenants fail to pay the landlord this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: December 13, 2012.

Residential Tenancy Branch