



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated October 7, 2014 ("1 Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants (individually "tenant DM" and "tenant ML" and collectively "tenants") and the landlord's agent ("landlord") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's agent confirmed that she was the manager of the rental building and had authority to represent the landlord as an agent at this hearing.

The landlord testified that she served the tenants with the 1 Month Notice by posting it to the door of their rental unit on October 31, 2014. The tenant DM testified that both tenants received the notice on November 2, 2014. In accordance with sections 88 and 90 of the Act, I find that the tenants were served with the 1 Month Notice on November 2, 2014.

The tenant DM testified that he personally served the landlord with the tenants' application for dispute resolution hearing package ("Application"), but he could not recall the exact date. The landlord confirmed receipt of the tenant's Application. In accordance with sections 89 and 90 of the Act, I find that the landlord was served with the tenant's Application, as declared by the parties.

The landlord testified that she served the tenant DM with the landlord's written evidence package on December 4, 2014. The tenant DM acknowledged receipt of the landlord's evidence on behalf of both tenants and confirmed that they had both reviewed it prior to

this hearing. In accordance with sections 88 and 90 of the Act, I find that the tenants were served with the landlord's evidence, as declared by the parties.

During the hearing, the landlord made an oral request for an order of possession against the tenants, in the event that the tenants' application was dismissed.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this periodic tenancy began on August 1, 2014. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenants, which the landlord continues to retain. A written tenancy agreement was provided with the landlord's evidence.

The landlord entered into evidence a copy of her 1 Month Notice. In that Notice, requiring the tenants to end this tenancy by November 30, 2014, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

In accordance with subsection 47(4) of the Act, the tenants must file their application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenants received the 1 Month Notice on November 2, 2014. The tenants filed their application for dispute resolution on November 10, 2014. Accordingly, the tenants filed within the ten day limit under the Act.

The landlord provided documentary evidence of noise complaints received by the landlord. This evidence included a September 24, 2014 letter, written by a tenant, "R"; a November 30, 2014 letter written by a tenant "LM"; and a November 30, 2014 letter written by the assistant manager, "MG". The landlord issued a written warning to the tenants on August 25, 2014, shortly after they moved into the rental unit, regarding these noise complaints from other neighbours. She provided this written warning with

her evidence. The landlord stated that she received complaints from other occupants in the rental building, with respect to these tenants' behaviour. She said that some occupants have approached these tenants personally to complain, but nothing has changed. The landlord maintained that some occupants were too afraid for their own safety, to write letters in support of the landlord's evidence. The landlord testified that occupants in the rental building are afraid for their safety because of the tenants' behaviour and many did not testify out of fear, at the hearing.

The landlord received complaints of noise, including loud music and television, moving of furniture, hammering, drilling, sawing and scraping noises, with respect to these tenants. One of the complaints from "R," who lives directly above the tenants' rental unit, stated that his family could not sleep during the night because of the noise from the tenants' rental unit, that it was terrifying his 9-year-old niece, causing her to wake up at 6 a.m. and affecting her ability to attend school. This complaint discusses ongoing loud noises from the tenants' rental unit between the hours of 11pm and 5am and at other various times of the day. This noise caused R's sister to move out of the unit, which may result in R moving out as well, in the near future, as per the landlord's evidence.

One of the occupants, LM, who lives directly below the tenants' rental unit, provided a written complaint to the landlord. She stated that she had to move her bed from her bedroom to the living room, in order to avoid the noise from the tenants, while she was sleeping. Her sleep was significantly disrupted by the tenants. LM stated that she considered vacating her rental unit, asked the landlord to be relocated to another unit, has looked for other places to live and may leave if the tenants are not evicted from the rental unit. She documented ongoing complaints of noise continuously from August to November 2014, from the late hours of the night to the early hours of the morning, between 11 p.m. and 9 a.m.

The tenant DM admitted that both tenants received the landlord's warning letter of August 2014, and were aware of these noise complaints. He stated that they were moving furniture into their rental unit for the first month or longer after their tenancy began, and that it was loud and he apologized for the noise. The tenant DM further admitted that his female friends "S" and "J" were staying at his apartment during different periods of time between August and November 2014 and were very loud, yelled and argued frequently with the tenants and caused a number of problems in the rental unit. He stated that both S and J have now left the rental unit. The landlord stated that she denied permission to the tenants to have J occupy the rental unit, because she was aware of J's arrest warrant after J punched her husband in the head.

The landlord stated that she received complaints from other occupants in the rental building, regarding drug and prostitution activity being carried on in the tenants' rental unit as well as in the rental building, particularly in stairways near the tenants' rental unit. These complaints were also recorded in the above letter from the occupant, LM. The complaints refer to frequent outside visitors to the tenants' rental unit to purchase drugs and carry on prostitution activity at all hours of the day and night. The landlord received complaints that R could smell "crack" on the balcony and had to avoid using this area because it was harmful to his and his family's health. One of the complaints from LM is that she spoke with the tenant DM's friend S, who told her one day that crystal methamphetamine was being sold in the tenants' rental unit and that her cat ran away and could not be located one day when the tenants and her were "high" in the rental unit. The letter referred to S as a "prostitute" who was complaining about the "drug dealers," referencing the tenants, with whom she was living.

The tenant ML denied that any drugs were sold in the rental unit. The tenant DM admitted that marijuana was sold from the rental unit in order to earn extra cash, but it was only done for 1.5 to 2 months and it has now stopped. He said that it was sold or "basically given away for free" to other occupants of the rental building as well as to outside visitors. He admitted that it occurred at all hours of the day and night, as he works different shifts and is awake at different hours. The tenant DM stated that he had a copy of the tenancy agreement and was aware of the provision which specifically states in the first paragraph of the conditions, that no illegal activity or commercial business is to be carried on in the rental unit during the tenancy. The landlord stated that she discussed these issues, of carrying on drug and prostitution activity, when she personally served the tenant DM with the 1 Month Notice.

There was also a third complaint from the landlord's husband, who is also the assistant manager, MG. The complaint from MG stated that he saw S injecting herself with a drug needle in the stairway nearest the tenants' rental unit and she advised MG that she was there visiting the tenants in their rental unit. When MG went to confront one the tenant ML, he took responsibility for S and admitted that she was visiting the tenants in the rental unit. MG then returned to the same stairway and noticed that S had put an "out of order" sign on the door and the landlord said that it was to keep people away from that area. MG also noted drug paraphernalia all over the floor, during this time. The tenant DM testified that he believed that S would have been injecting herself with drugs in the stairway because she was that "type of person." The tenant ML admitted that he took responsibility for S that day but only to the extent that she was visiting the tenants in the rental unit, not that he was aware of her using drugs. He said that he never saw her use drugs in his rental unit, but he was not aware of whether she used drugs while in his bathroom.

During the hearing, the landlord made an oral request for an order of possession, if I upheld the 1 Month Notice. She stated that due to her compassion for the tenants and the difficulty in finding housing during the winter months, she would be willing to accept an order of possession effective on February 1, 2015. The tenants stated that they wished to remain in the rental unit but would appreciate the February 1, 2015 date, in the event that I upheld the landlord's 1 Month Notice.

Analysis

While I have turned my mind to all of the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Where a tenant applies to dispute a 1 Month Notice within the required time limits, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

The tenancy agreement, provided with the landlord's evidence, states that:

"In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the tenants and guests shall not disturb, harass or annoy occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time and shall maintain quiet between 11 p.m. and 9 a.m. Any tenant(s) who causes other occupants to vacate the premises because of noise, or other disturbance, harassment or annoyance...may have their tenancy terminated on short notice pursuant to the Residential Tenancy Act."

Section 28(b) of the Act protects a tenant's right to quiet enjoyment and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline #6 states that frequent and ongoing interference, if preventable by a landlord who stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. An example of such serious interference may include unreasonable and ongoing noise. Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable. However, vacating the rental premises, is not a requirement to show sufficient interference to breach the right to quiet enjoyment. A landlord can be held

responsible for the actions of other tenants if the landlord is aware of a problem and failed to take reasonable steps to correct it.

I find that the landlord provided sufficient evidence that the tenants significantly interfered with and unreasonably disturbed other occupants and the landlord. The tenants have admitted to ongoing loud noises of moving furniture, as well as yelling and arguing with other guests, including S and J, in their rental unit for several months. This is a pattern of behaviour which has caused a loss of quiet enjoyment to other occupants, causing one occupant to vacate her property, two others to consider leaving their rental unit, others to lose sleep, and another to alter her sleeping arrangements. The landlord has provided documentary evidence, in the form of complaint letters from other occupants, and a warning letter from the landlord to the tenants, regarding this behaviour. The tenants are aware of the tenancy agreement, which states that all occupants are entitled to quiet enjoyment between 11 p.m. and 9 a.m., in the rental building.

Of even greater concern, is the admitted drug trafficking that occurred in the rental unit between the tenants, other occupants in the building, and outside visitors. There was also drug use by the tenants' guest, S, in a common area of the rental building. These activities are prohibited by the tenancy agreement and both tenants are well aware of the illegal nature of these activities. It significantly interferes with the landlord's ability to maintain a crime-free, safe building where other tenants can have a right to quiet enjoyment. The landlord has provided documentary evidence, in the form of complaint letters from other occupants, regarding this behaviour. The tenants have confirmed the sale of drugs from their rental unit and the frequent traffic at varying hours of the day and night, by their customers.

The tenants' actions have significantly interfered with and unreasonably disturbed other tenants, causing them to fear for their own welfare and safety. It has risked the safety of these other tenants, as they are exposed to harmful substances, illegal activities and various people who may harm them. It also significantly interferes with their right to quiet enjoyment and safety. It has caused one tenant to vacate her rental unit and another two tenants to consider vacating the property. It is a pattern of behaviour which was ongoing for months and admitted to by the tenant DM.

Accordingly, I dismiss the tenants' application to cancel the 1 Month Notice, without leave to reapply. I find that the landlord is entitled to an order of possession against the tenants, effective by 1:00 p.m. on February 1, 2015.

As the tenants were unsuccessful in their application, they are not entitled to recover the filing fee from the landlord.

Conclusion

The tenants' application to cancel the 1 Month Notice is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on February 1, 2015**. Should the tenants or anyone on the premises 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: December 19, 2014

Residential Tenancy Branch

