



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fair Lable Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenants' application filed April 20, 2015: CNC

Landlord's Application filed May 21, 2015: OPC; FF

Introduction

This Hearing was scheduled to hear cross-applications the Tenants seek to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued April 10, 2015.

The Landlord seeks an Order of Possession and to recover the cost of the filing fee from the Tenants.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

It was determined that the Tenants served the Landlord's agent with the Notice of Hearing documents by hand delivering the documents shortly after April 20, 2015.

It was also determined that the Landlord served each of the Tenants with its Notice of Hearing documents on May 21, by hand delivery. The Tenants also acknowledged receipt of the Landlord's documentary evidence.

Background and Evidence

This tenancy began on September 1, 2012. Monthly rent is \$825.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$412.50 at the beginning of the tenancy.

A copy of the Notice was provided in evidence. The Landlord issued the Notice because "the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord";

and “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 or the landlord”.

EK acknowledged that the Landlord is not alleging illegal activity on the part of the Tenants. Therefore, this reason for ending the tenancy was not considered.

The Landlord’s agents EK and AS gave the following testimony:

EK made reference to a Hearing that took place on August 7, 2013. A Decision was rendered on August 7, 2013, a copy of which was provided in evidence. EK stated that the arbitrator wrote in her August 7, 2013, Decision: “The tenants are now considered fully aware that, under the Act, the tenancy may be ended due to the actions of their guests while in the rental unit or the common areas of the residential property”.

EK testified that things appeared to be quiet after the August 7, 2013, Decision, but that the Tenants’ guests are starting to cause disturbances again. She stated that another tenant moved out of the rental property because the Tenants’ guests were smoking in the common areas including the hallways. EK testified that an Addendum to the tenancy agreement provides that there is no smoking in the common areas of the rental property.

EK testified that the Tenants’ guests have also been caught on video surveillance drinking alcohol in the hallways, and that another occupant in the building saw the Tenants’ guests throwing rocks and debris at the Tenants’ balcony to get the Tenants’ attention. The occupant was concerned that the Tenants’ window might break or that someone would get hurt.

EK testified that she received complaints that other occupants are unable to sleep because of the “comings and goings”. In particular, on April 12, 13 and 14, the Tenants had a loud party which kept the occupant below and his young family awake.

AS testified that a friend of the Tenants attempted to sell AS’s husband drugs in an elevator and that a man told AS to “watch your back” and that something will happen to you. She stated that the man went into the rental unit after he warned her.

Copies of letters from other occupants and photographs from the surveillance cameras were provided in evidence.

EK stated that the Tenants have paid rent for the month of June, 2015, and that the Landlord would be satisfied with an Order of Possession effective June 30, 2015.

The Tenant MM gave the following testimony:

MM denied that their guests threw rocks at the balcony. He testified that their guests threw wood chips because the buzzer doesn't work. MM stated that the Tenants tell their guests to stop, but it is very difficult to control other people's actions.

MM denied that drug use was taking place at the rental unit. MM stated that the Tenants don't allow people to walk around with booze in the hallways. He stated that the smoker depicted in the surveillance photograph came to the rental unit looking for his brother and was not the Tenants' guest. MM stated that other occupants in the rental property also smoke in the common areas.

MM stated that the Tenants had 4 people over playing cards and drinking on the evenings of April 13 and 14, 2015. He said that the balcony doors were "probably open" to air the room out from smoke, but that the rental property was poorly insulated for noise.

Analysis

A certain amount of noise (the noise of day to day living) is to be expected in a residential property. Tenants cannot be expected to be absolutely quiet during the day. However, if the noise exceeds reasonable noise during the day, or continues late into the evening hours, it may be reason to end the tenancy for cause.

In this case, the Tenants were warned that they are responsible for the actions of their guests. The Tenants did not dispute that their guests were smoking in the hallways. I accept EK's testimony that this is contrary to the addendum to the tenancy agreement. Although other occupants in the rental property may be also smoking in the hallways and common areas, I am only tasked with determining whether or not the Tenants and their guests disturbed other occupants in the building. The Tenants admitted that they were drinking and smoking with the windows open on the nights of April 12 and 13, which was after the Notice was issued and served.

On the balance of probabilities, I find that the Tenants or their guests have significantly interfered with other occupants on several occasions and that the Landlord's Notice is a valid notice. The Landlords have a responsibility to the other occupants under Section 28 of the Act to provide them with freedom from unreasonable disturbance. I dismiss the Tenants' application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

- 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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Therefore, I find that the Landlord's Application for Dispute Resolution, which was filed after the Tenants filed their Application, was not necessary. I find that the Landlords are not entitled to recover the cost of the filing fee from the Tenants.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

The Landlord is provided with an Order of Possession effective **1:00 p.m., June 30, 2015**, for service upon the Tenants. 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: June 03, 2015

Residential Tenancy Branch

