



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding 556768 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlords – OPC, MNR, FF

For the tenants – CNC, PSF, RR, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of this application. The tenants applied to cancel a Notice to End Tenancy for cause; for an Order for the landlords to provide services or facilities required by law; for an Order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenants' application and the landlords' application are sufficiently related to the main issues to be dealt with together. I therefore will deal with the tenant's application to cancel the Notice to End Tenancy and the landlords' application for an Order of Possession. I will not deal with the remaining sections the respective claims at this hearing.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession?
- Are the tenants entitled to an Order cancelling the One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2014. Rent for this unit started at \$1,500.00 per month but was reduced to \$1,400.00 per month. Rent is due on the 31st of each month. The tenants paid a security deposit of \$750.00 prior to the start of the tenancy.

The landlords testified that the tenants were served with a One Month Notice to End Tenancy for Cause (the Notice) on May 30, 2015 in person. The parties have each provided a copy of the Notice in documentary evidence. The landlords testified that the Notice was issued due to the following reasons and has an effective date of June 30, 2015:

- 1) The tenant is repeatedly late paying rent.
- 2) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (iii) Put the landlord's property at significant risk;
- 3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- 4) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlords testified that the tenants have been repeatedly late paying their rent. Rent is due on the last day of each month, the tenants paid rent late in December, January, February and April. Since the Notice was issued the tenants have also paid rent late in June and July. The landlord had issued two separate 10 Day Notices to End Tenancy for unpaid rent in February and June; however, the tenants paid within the five allowable days.

The landlords testified that the tenants have significantly disturbed other tenants with noise from their unit often late at night which has woken the tenants in the unit below or prevented them sleeping. The landlords had verbally requested that the tenants stop making noise on many occasions and a warning letter was sent to the tenants on December 01, 2014. The landlords referred to the letter from the tenants below in which they describe fighting and screaming, sounds like furniture being dropped, instances where strangers from the tenants' unit above have walked into the lower tenants' suite; yelling, swearing and screaming and sounds like violent fighting upstairs. The lower tenants write that they get a smell of marijuana and smoke coming into their unit, the children playing around the lower tenants' vehicles, bending the mirrors back, two ladies talking upstairs about they how they only took half and they feel so good.

The landlord testified that they were at the house themselves to fix the dryer for around four minutes. During that time they heard the sister of the female tenant screaming at her child to get in the car for the period the landlord was there.

The landlords testified that the tenants have put the property at significant risk. According to the City Bylaws only five people may occupy a unit with one stove. The tenants allowed their sister, brother in law, and three children, to move into the property. There were then nine people living in a three bedroom unit. The tenants were smoking cigarettes and marijuana and this is evidenced by the cigarette butts found outside and the smell of marijuana in the lower tenants' unit. The tenants also put up a kiddi pool and the children were observed by the landlord in the pool without adult supervision. This could make the landlords' home insurance invalid and the landlords libel for any child drowning in the pool.

The landlords testified that the tenants have engaged in an illegal activity which adversely affected the quiet enjoyment, security, safety or physical wellbeing of the landlords and other tenants. This relates also to the incidents stated above; namely the smoking of illegal substances or engaging in illegal substances and allowing their guests to enter the tenants' unit below.

The landlords testified that the tenants have breached a material term of the tenancy agreement. The tenancy agreement addendum states that only the tenants and their two children plus another named person, who has since vacated, may live in the rental unit; it also states that the tenants agree this is a non-smoking suite and surrounding property and includes invited guests of the tenants; no mechanical work is to be performed on the property and unregistered vehicles or inoperable vehicles may be removed by the landlord at the tenants' expense.

The landlord testified that the tenants allowed another family to live in the unit making nine occupants of the unit instead of four and as the utilities are included in the rent it caused additional expense. This other family moved in with their belongings in a U-Haul truck on April 30, 2015 and it was not until May that the tenant emailed the landlords and informed them her sister and her family had moved into the tenants' suite until they found a place of their own. The landlord testified that after these other occupants had lived there for three weeks the landlord sent a letter to the tenants notifying them that they are being served notice that their five guests have stayed an unreasonable length of time and are required to vacate the premises.

The landlords testified that these other occupants did not vacate as required in the Notice and the tenant did not email the landlords until July 01, 2015 saying that their guests had now left. The landlords testified that it is unacceptable for these occupants to have lived in the unit for over 60 days and they were not guests but rather unauthorised occupants. The tenants did not comply with the landlords' written notice to remove these extra occupants and have therefore breached the terms of the tenancy agreement.

The landlord testified that the tenants' family also had extra vehicles at the rental unit and used the garage to store their belongings. At one time a car was up on blocks for at least three days while work was being done on it in noncompliance with the tenancy agreement; at least one vehicle was unlicensed; and the tenants were smoking at the rental unit. Due to the above the landlords testified the tenants also breached the tenancy agreement. The landlords requested that the One Month Notice is upheld and they seek an Order of Possession for July 31, 2015.

The tenants disputed the landlords' claims that they were late with their rent on numerous occasions. The tenants testified that they were late with rent for February, 2015 but most of the other months the landlords had postdated cheques dated for the 1st of each month as that was the date the tenants thought rent was due. The tenants agreed that rent for June was also late but March rent was paid early.

The tenants agreed that they received a letter from the landlords on December 01, 2014 about noise complaints. The tenants testified that they have a son with special needs who has temper tantrums and behavioral issues. The tenants disputed that they fight, scream and swear but agree that on occasion their son will have a temper tantrum which they try to deal calmly with to defuse the situation.

The tenants testified that they do not do drugs or have parties in the house. The only tenants that party and smoke marijuana, is the tenants living downstairs or their boyfriends. The tenant testified that on April 20, 2015 they had informed the male landlord about the smell of marijuana coming into their suite. The male tenant testified that they do smoke cigarettes but they pick up their butts, whereas the tenants downstairs also smoke and do not pick up their butts. The male landlord was going to deal with the tenants downstairs but after their boyfriend moved out it appears to have stopped. The male tenant testified that he is regularly tested through his work for drug use and they do not have the time or money to do drugs.

The tenants testified that the female tenant's sister, husband and three children arrived on April 30, 2015 with a truck of their belongings. This only takes about a third of the garage space. The tenants testified that they live in a four bedroom suite and then stated that the fourth bedroom is the den. The children did not arrive until May 12, 2015. On May 13, 2015 the landlord arrived and said their guests had to leave and on May 20, 2015 the landlord served the tenants with a letter saying their guests had to leave.

The tenants testified that it was only supposed to have been a temporary stay and they had asked the landlord if they could compensate them for the additional utilities used by their guests; however, the landlord did not want this. The guests were not all there all the time. The children stayed at the home and their parents stayed elsewhere at weekends. One of the children was 16 years old and went to stay with his father on occasions. They were all moved out on June 30, 2015.

The tenants testified that their brother in law had a flat tire and had to change his tire. This only took about an hour and the car was not on blocks for three days. The male tenant testified that the lower tenants have had an unlicensed vehicle on the property for three months. The male tenant testified that both his vehicles are licensed and agrees that one of his vehicles was unlicensed for a couple of months.

The tenants testified that when it was hot a few weeks ago they did put up a two foot deep by 12 foot kiddi pool in the garden. It was always used with adult supervision. The landlord had not told the tenants they could not put up a pool but when the landlords asked the tenants to take it down they complied.

The landlord asked the tenants the following questions:

Landlords' questions	Tenants' response
Why did you not disclose that you had a child with special needs	We thought we could handle it and have been mostly successful. We do not feel we have to disclose this as he is not violent or dangerous.
You stated your guests were not there every day yet a blue car was there everyday	Your guest had a work vehicle and their car was there.
We saw the car up on blocks on a Monday, Tuesday and Wednesday	No it was only on blocks for an hour
Did you empty the pool into the yard and was there a complaint about water flooding the neighbour's drive	Yes we did, but no we did not receive a complaint from the neighbours
Did you advise us your family members were moving in	I did later and offered to pay additional costs
How big was the U-Haul truck was it a 450 18 foot van	I think it was a five ton truck
What school did the children go to and what address did you give the school	[local school named here] the rental address
Did your guests receive mail at the rental unit	No

The tenants asked the landlords the following questions:

Tenants' questions	Landlords' response
Did you refuse to take rent for June	No the tenants called on June 04, 2015 and said they had a rent cheque and we could pick it up. We said no they should send it by email transfer as they had been doing previously. The landlords did not get it until the following day
When I offered to compensate you for utilities why did you refuse	You did not admit at first you had additional occupants you only offered money after the landlords found out but no money has been paid.
Why could we not use the kiddi pool	There was no adult supervision when I was at the house. This was a common area and the other tenants did not want the pool there or lots of children playing in the pool. If a child drowned the landlords would be libel.

Analysis

In this matter, the landlords have the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlords' evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I am not satisfied that the tenants have paid late on at least three occasions prior to the One Month Notice being issued. The landlords have provided evidence only of a late payment for February, 2015 and this is insufficient reason to end the tenancy.

With regard to the landlords' reason that the tenants or a person permitted on the property by the tenants has disturbed the lower tenants; the landlord has the burden of proof to show that the lower tenants were unreasonably disturbed. When a rental unit is used by a family then the lower tenants must expect some normal living noise; however, when additional five family members also move into the suite then this increases the noise level beyond what is acceptable. Given also that the tenants have a special needs child who by their own admission suffers from behavioral issues and temper tantrums the noise levels increase again. While I accept that the tenants are doing their best in dealing with their son's issues if the tenants below are significantly disturbed with two families' living above then the landlord would have grounds to end the tenancy. I am satisfied with the evidence before me that the tenants and the other occupants have disturbed the tenants living below and consequently this is grounds to uphold the Notice

With regard to the landlords' grounds that the tenants or a person permitted on the property by the tenants has put the landlords' property at significant risk; the landlords have the burden of proof to show what the risk is to their property. The tenant agreed they did smoke on the property dispute the term of the tenancy agreement; however, there is insufficient evidence to show that this has put the property at significant risk. I find there is insufficient evidence to uphold an end to the tenancy based on this ground.

With regard to the landlords' ground that the tenants have engaged in an illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical wellbeing of the landlord or another occupant; The landlord must again meet the burden of proof in this matter and I find the landlords have insufficient evidence to show that the tenant or their guests have engaged in an illegal activity such as drug use. The tenants have contradicted the landlords' testimony and the letter from the lower tenants concerning the use of illegal substances. I find I can place little weight on the lower tenants' comments in the letter as they have not directly seen the tenants engaging in drug use. I find there is insufficient evidence to uphold an end to the tenancy based on this ground.

With regard to the landlords' ground that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The tenants agreed that they let their family members stay in the rental unit without the landlords' authorization. The tenants may or may not have offered to pay for additional utilities used during that period; however, that is irrelevant to this matter. The addendum to the tenancy agreement clearly sets forth who may live in the rental unit and even after the landlords wrote to the tenants on May 20, 2015 the tenants continued to allow their family members to occupy the suite until the end of June. I find therefore the tenants breached a material term of the tenancy agreement by allowing five other occupants in the rental unit and this was not corrected within a reasonable time after written notice to do so. As such I find this is grounds to end the tenancy.

With regard to the other breaches of the tenancy agreement such as the mechanical work being performed on a vehicle, unlicensed vehicles on the property and smoking on the property; the landlord did not put any further breaches in writing asking the tenants to comply within a reasonable time. I therefore find the landlords may not have grounds to end the tenancy for these reasons.

As the landlords have met the burden of proof under two grounds indicated on the One Month Notice I find the tenants' application to cancel the Notice is dismissed and the landlords are entitled to an Order of Possession effective on July 31, 2015 pursuant to s. 55 of the *Act*.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. I order that the landlords retain this amount from the security deposit of **\$750.00** leaving a balance **\$700.00** held in trust by the landlords. This must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The reminder of the landlords' application is dismissed with leave to reapply.

The tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

The reminder of the tenants' application is dismissed with leave to reapply.

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: July 24, 2015

Residential Tenancy Branch

