



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC 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 ("1 Month Notice") pursuant to section 47 of the *Act*; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing (2 tenants and a representative for the landlord) as well as two witness for the landlord. The landlord confirmed receipt of the tenants' Application for Dispute Resolution and attendant materials and the two tenants confirmed receipt of 1 Month Notice as well as the evidentiary materials submitted for this hearing. The tenants will be referred to as Tenant P and Tenant C.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to an order requiring the landlord to comply with the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on June 15, 2013 with a rental amount of \$830.00 and a parking amount of \$15.00 payable on the first of each month. The landlord continues to hold a security deposit of \$415.00 paid by the tenants at the outset of this tenancy (June 11, 2013). The tenants both continue to reside in the rental unit.

The landlord issued a 1 Month Notice on February 11, 2016 with an effective date of March 31, 2016. The landlord relies on the following reason for issuing the notice to end the tenancy for cause;

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

The landlord submitted a copy of correspondence indicating warnings to both tenants and documenting complaints from other occupants of the residential premises to the management including but not limited to; that Tenant C and her boyfriend (not Tenant P) were “using very loud voices and waking [the occupant] up”; and that Tenant C’s friend parks his vehicle in the other occupants’ paid parking spots. The landlord submitted a warning letter to the tenants on December 21, 2015. The landlord and the manager of the residential premises testified that the tenants have been provided with several verbal and written warnings over the course of the tenancy. The manager testified that there is always a temporary improvement after the issuance of a warning by the landlord but then the tenants slowly begin to increase their volume and cause new disturbances again.

One occupant of the residential premises testified as a witness at this hearing (“Witness L”). The landlord submitted a copy of a letter of complaint from witness L dated March 30, 2016 documenting bothersome activity of the tenants. The letter included reference to music blaring, many guests coming and going at a variety of hours; intoxicated residents and guests at the tenants’ rental unit; guests of Tenant C creating disturbances inside the residence as well as in the parking lot area; guests of Tenant C parking in residents’ paid parking spots; loud and violent arguments from the tenants’ rental unit.

Witness L testified that he is regularly disturbed by the tenants; that he has heard physical violence through the walls of the rental unit and on one occasion; that he has attended the rental unit to ensure no one was seriously harmed. He restated the information provided in his letter.

A letter submitted by the tenants from a witness stated that Witness L was very aggressive in coming to discuss noise with Tenant C however this witness did not attend the hearing. Two handwritten notes were submitted by the tenants that stated they also reside in the rental unit and that they are not disturbed by the tenants; that they are “good and friendly neighbours”. Tenant P referred to the handwritten letters submitted to say that the tenants do not cause disturbances within the rental unit. Witness L testified that he has always been respectful to the tenants but that he is very frustrated and disturbed by the behavior of Tenant C and her guests. Tenant C testified

that there are no loud voices, music or sounds except that sometimes the video games she plays might get loud or they might get excited while playing the games. She testified that she has not argued with her boyfriend: “never happened”.

The manager of the residence also testified at this hearing. She testified that there have been constant complaints about the tenants since they moved in. She testified that she has made a variety of attempts to accommodate the tenants and resolve the issues within the residential premises. She stated that she has issued warning notices and allowed the tenancy to continue when there have been minor improvements. She testified that she has offered a parking spot to Tenant C’s boyfriend so that he does not park in other occupants’ parking spots. She testified that she has had many conversations with Tenant P in order to try to address the behaviour of Tenant C.

The landlord also noted that the tenants received their 1 Month Notice on February 11, 2016. Both tenants confirmed receipt of the 1 Month Notice on this date. The landlord submitted that the tenants did not apply to cancel the notice to end tenancy until February 25, 2016. Tenant P submitted that he applied within 10 business days of receiving the notice to end tenancy.

Analysis

The tenant raised no argument or evidence in support of the portion of their original application that referred to an order that the landlord comply with the *Act*, a regulation or the tenancy agreement. I therefore dismiss that portion of the tenants’ application.

I have noted the information provided in testimony regarding the issuance of a 1 Month Notice to End Tenancy as the witnesses and landlord requested an opportunity to address these issues and the tenants requested an opportunity to respond. However, I do not need to consider the reasons for the issuance of the notice to end tenancy by the landlord or the submissions with respect to any significant disturbance by the tenants. The tenants applied to cancel this notice to end tenancy on February 25, 2016, 14 days after the issuance of the 1 Month Notice to End Tenancy. Tenant P argued that he applied within 10 *business* days however the *Act* and the Dispute Resolution Rules of Procedure requires that a tenant apply within 10 days of receiving a 1 Month Notice to End Tenancy. Therefore the **tenants’ application was made outside of the timeline to dispute the Notice to End Tenancy**. For this reason, the tenants’ application to cancel the notice to end tenancy is dismissed. The landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* as below,

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 to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the tenants were not successful in this application, I find they are not entitled to recover their filing fee.

Conclusion

The tenants' application to cancel the notice to end tenancy is dismissed.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

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: April 18, 2016

Residential Tenancy Branch