



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, MNSD, O

Introduction

This was a hearing with respect to the tenants' application to cancel a one month Notice to End Tenancy for cause and for a monetary award. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord's named representatives and the owner of the rental property called in and participated. The landlord submitted a package of documentary evidence prior to the hearing. The tenants acknowledged that they received it.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated September 23, 2016 be cancelled?
Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is the lower suite in the owner's house on Vancouver Island. The tenancy began on August 1, 2016. The monthly rent is \$1,000.00. The tenants paid a security deposit of \$500.00 and a pet deposit of \$500.00 before the commencement of the tenancy. The owners live upstairs in the house with their two children.

The landlord served the tenants with a one month Notice to End Tenancy for cause dated September 23, 2016. The Notice was sent to the tenants by registered mail on September 26, 2016. The tenants applied to dispute the Notice on October 3, 2016. The Notice stated that the tenants were required to move out of the rental unit on October 31, 2016. The reason given for ending the tenancy was that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The owner of the rental property testified that from the beginning of the tenancy the tenants have caused disturbances by shouting, screaming and swearing at each other.

The landlord's representative said that the swearing and fighting has been so severe that the police have attended at the rental unit on 12 different occasions to deal with the tenants in response to complaints. The complaints have not all come from the owners; neighbours living next door to the rental property have also complained about noise and disturbances by the tenants. The owner prepared a: "disturbance log" setting out disturbances that have taken place from August 16, 2016 to November 7, 2016. There were numerous recorded instances of verbal fights between the tenants with threats, swearing and screaming. Some events lasted for 10 to 15 minutes and others for an hour or more. There were eight recorded police attendances. Several of the police attendances were in response to complaints by neighbours, not by the occupants of the rental property. The landlord commented in its evidence that the female tenant suffers from a brain injury that causes her to be susceptible to emotional outbursts

The female tenant testified that she does not fight with her co-tenant and most of the disputes heard by the owners took place on the telephone between the tenant and her ex-boyfriend. The tenants said they did not have any noise problems or complaints in their previous residence where they lived for several years. The tenants said that the landlord's complaints are exaggerated. They said they moved when the house was sold and they blamed the landlord for "placing" them in the rental unit. The tenant said the realtor who sold the home found the rental unit for them. The tenants complained that the owners have not made any effort to get to know the tenants and said the relationship between the owners and the tenant was difficult. The tenants said they wanted to move, but before they could move they needed to save enough money to be able to pay for a move and find new accommodation. In the tenants' application they made a claim for their anticipated moving costs. The tenants made a monetary claim for \$2,400.00.

The tenants requested additional time to move and suggested that they could be able to move by January 1, 2017. The landlord requested that the tenants' application be dismissed and an immediate order of possession be granted.

Analysis

The evidence of the landlord and the owner sets out a lengthy chronology of disturbances. Contrary to the female tenant's testimony, the landlord provided many reports of fights, shouting and swearing between the co-tenants as well as between the female tenant and her ex-boyfriend. The female tenant said that the landlord has made police complaints to support the reasons for ending the tenancy. She said that the police have not arrested or removed anyone from the rental unit when they have

attended, but she did acknowledge that on one occasion the police did take her away from the unit for what was described as a “cooling off” period.

I find that there is ample evidence to support a finding that the tenants have significantly interfered with or unreasonably disturbed the owners of the rental property on a continuing basis since the tenancy began. There have been more occurrences since the landlord submitted the log of events. The tenant’s application to cancel the one month Notice to End Tenancy is dismissed without leave to reapply. There is no basis for the tenants’ claim for a monetary award and it is dismissed without leave to reapply.

Section 55 (1) of the *Residential Tenancy Act* provides as follows:

- 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.

Section 47 of the Act contains provisions relating to a landlord’s Notice to End Tenancy for cause. Section 47 (2) provides that:

- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The Notice to End Tenancy was sent to the tenants by registered mail on September 26, 2016. Pursuant to section (0 of the *Act*, the Notice was deemed to have been received on the 5th day after it was mailed, which was on October 1, 2016. Section 53

of the *Residential Tenancy Act* provides that if a Notice to End Tenancy is given to end a tenancy on a date that does not comply with the *Act* the Notice is deemed to be changed to the earliest date that complies with the applicable section of the *Act*. Applying section 47(2) of the *Act* the earliest date that the Notice to End Tenancy can be effective is November 30, 2016.

Conclusion

I have dismissed the tenants' application without leave to reapply. The Notice complies with the requirements of the *Residential Tenancy Act* and the effective date is corrected to end the tenancy on November 30, 2016. The landlord is entitled to an order of possession effective November 30, 2016 after service on the tenants. This order may be filed in the Supreme Court 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: November 23, 2016

Residential Tenancy Branch