



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on October 5, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 1 Month Notice to End Tenancy for Cause, dated September 28, 2016 (the "1 Month Notice");
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenants attended the hearing on their own behalves. The Landlord M.H. attended the hearing on behalf of the Landlords. All parties giving evidence provided a solemn affirmation.

The Tenant confirmed his Application package was served on the Landlord in person. The Landlord acknowledged receipt on November 22, 2016, and confirmed he had sufficient time to review and consider the documentary evidence submitted. The Landlord testified his documentary evidence was served on the Tenant, in person, on November 14, 2016. The Tenant acknowledged receipt on that date. No further issues were raised with respect to service or receipt of evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling the 1 Month Notice?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. It confirms the tenancy began on March 1, 2016. Rent in the amount of \$1,050.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$525.00 and a pet damage deposit of \$525.00 at the beginning of the tenancy.

The Landlord M.H. provided oral testimony in support of the 1 Month Notice, which was served on the Tenants on September 28, 2016. The Tenants' Application confirms receipt of the 1 Month Notice on that date. First, the Landlord M.H. testified there have been a number of complaints of noise emanating from the Tenants' rental unit. He submits that the noise has significantly interfered with or unreasonably disturbed another tenant or the Landlords, and that the noise has resulted in the loss of at least one tenant, A.M. He says there were no noise complaints before the current Tenants moved into the rental unit.

The Landlord submitted an email from the previous tenant, A.M., who lived directly below the Tenants. The email refers to two incidents in March 2016. The first involved an argument between the Tenants, during which A.M. heard "verbal slander, yelling and door slamming."

The second incident noted by A.M. describes a "more serious disturbance", during which she was subjected to "hours of yelling, door slamming and things being thrown...until 2 or 3 in the morning." The email indicates A.M. discussed the incident with the Tenant C.T. the next day; she was apologetic and advised that the relationship would be ending. After these incidents, on April 27, 2016, the Landlord V.S. sent the Tenant C.T. an email to advise of a noise complaint and asking her to "respect the needs of the tenants below." According to the Landlord M.H., A.M. moved out of the rental unit because of these and other incidents. He is also concerned that the current tenants below might also move out.

The Landlord M.H. also referred to a more recent incident on September 16, 2016, during which the Tenants got into another argument. He testified that an argument became violent and the police attended. The Tenant R.L. was removed from the

scene. In support, the Landlord submitted an email from D.J., the tenant currently living in the unit below the Tenants. In the email, dated September 17, 2016, D.J. stated the incident involved “a fair amount of yelling, wall banging and door slamming.” D.J. indicated the Tenant R.L. was “extremely verbally abusive and derogatory.” According to D.J., police were required to use force to subdue the Tenant R.L., which is confirmed in a text message from the Tenant C.T. to the Landlord V.S. on September 17, 2016, also included with the Landlords’ documentary evidence.

The Landlord M.H. also submitted into evidence a copy of a written notice, dated October 21, 2016, in which the Landlord V.S. advised the Tenants of noise complaints relating to the volume with which the Tenant R.L. speaks on the phone, and of “sustained barking” by the Tenants’ dog.

In reply, the Tenant R.L. acknowledged a disturbance on September 16, 2016, but that it was an isolated incident. In his written submissions, he stated he apologized to the Landlord V.S. but that he never received a notice with respect to this disturbance.

With respect to the volume with which he speaks during telephone conversations, the Tenant R.L. stated these are normal conversations that are part of his business. In his written submissions, he noted that these conversations occur between 8:00 a.m. and 8:00 p.m. The Tenant R.L. stated “I very much feel I am within my rights to do so.”

In response to the allegations that the Tenants’ dog barks continuously, this was denied by the Tenant R.L. However, the Tenants’ written submissions state: “We both very much intervene and correct him when he begins to bark and at no time have I ever heard the lower tenants correct him if it starts”.

Second, the Landlord stated the Tenants have stored personal belongings in the common areas of the rental property. A notice to the Tenants, dated October 20, 2016, was submitted with the Landlords’ documentary evidence. It states: “Multiple times since you have occupied the suite, you have left items such as a TV for over a month in this area.”

In reply, the Tenant testified that the October 20, 2016, notice was the first notification he received and that it was not issued until after the Landlord issued the 1 Month Notice. In his written submissions, he confirmed “everything has been removed and stored properly.”

Third, the Landlord testified the Tenants have misused the shared laundry facilities. That is, the Landlord M.H. stated the Tenants have not complied with a laundry room use schedule provided to the Tenants on October 20, 2016. A copy of the notice was included with the Landlords’ documentary evidence.

In reply, the Tenant R.L. stated the tenancy agreement included a term that future changes would be agreed to in writing. He advised he never agreed to changes with respect to the use of laundry facilities.

Fourth, the Landlord, M.H. stated the Tenants’ dog has urinated on the deck and that the urine has flowed onto the deck of the tenant below. He provided an email from D.J., dated November 8, 2016, which states: “We did indeed see [the Tenants’ dog] peeing off the side of the deck. [We] were sitting in our back area under the deck, heard [the Tenants’ dog] walking about and then saw his urine stream out from above.” The Tenants were given a notice dated October 21, 2016, regarding this incident.

In reply, the Tenant R.L. stated this could not have happened. His written submissions described this allegation as “completely absurd and also fabricated”. He referred me to a photograph submitted with the Tenants’ documentary evidence with depicts gutters around the deck. The Tenant R.L. submitted these gutters would have caught any urine if that happened.

Finally, the Landlord referred to a door repair completed by the Tenants, which was completed without notice to the Landlord and was done poorly. A photograph of the door was submitted by the Landlords.

In reply, the Tenant R.L. acknowledged he replaced the door with one of much better quality than what was existing.” The Tenants suggested in their written submissions that the Landlord retains security deposit and “this should not be a concern.”

In reply to all of the allegations raised by the Landlords, the Tenant R.L. testified he did not receive adequate notice of these issues from the Landlords.

As a result of the above incidents, the Landlords issued the 1 Month Notice. A Proof of Service form submitted by the Landlords confirms the 1 Month Notice was served on the Tenant C.T., in person, on September 28, 2016, which is acknowledged in the Tenants' Application and the written submissions of the Tenants.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. In this case, the Landlord wishes to end the tenancy on the basis that the Tenants or a person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlord M.H. provided oral testimony and documentary evidence describing a number of incidents throughout the tenancy. However, he expressed particular concern about the impact of noise emanating from the Tenants' rental unit on other tenancies. The Tenant R.L. acknowledged incidents involving arguments between the Tenants, but testified he was not given proper notice of many of the other allegations made by the Landlord.

In this case, I find that the arguments in April and September 2016 significantly interfered with or unreasonably disturbed another occupant and the Landlord. This finding is reinforced by the nature of the arguments, and that one recent incident required police intervention involving the removal of the Tenant R.L. from the premises. Further, I find the incidents in April 2016 caused a previous tenant, A.M., to vacate her rental unit, and that the Landlord is concerned about losing the tenants who currently live directly below the Tenants. As the noise emanating from the Tenants' rental unit has satisfied me there is cause to end the end the tenancy, I have not addressed the remainder of the Landlords' allegations in this analysis. Accordingly, I order that the 1 Month Notice is upheld and the Tenants' Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 10 Day Notice, I find it complies with section 52 of the *Act*. Accordingly, by operation of section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Conclusion

The Tenants' Application is dismissed.

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order may be filed in 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: November 29, 2016

Residential Tenancy Branch