



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on October 12, 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 30, 2016 (the "1 Month Notice");
- an order granting recovery of the filing fee.

The Tenant M.N. appeared at the hearing behalf of both Tenants. The Landlord attended the hearing on his own behalf, although S.L. provided oral testimony. All parties giving evidence provided a solemn affirmation.

The Tenant M.N. confirmed the Tenants' Application package was served on the Landlord by registered mail, on or about October 13, 2016. The Tenants submitted a copy of the Canada Post registered mail receipt in support. The Tenant M.N. testified the package was received by the Landlord on October 16, 2016. S.L. acknowledged receipt on that date.

On behalf of the Landlord, S.L. confirmed the Landlord's evidence package was served on the Tenant by Federal Express. The Tenant M.N. acknowledged receipt. No further issues were raised with respect to service or receipt of the parties' documents.

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 a copy of the written tenancy agreement between the parties. It confirms the fixed-term tenancy began on March 19, 2016 and ends on March 15, 2017. Rent in the amount of \$1,150.00 per month is due on or before the first day of each month. The Tenants paid a security deposit of \$575.00 and a pet damage deposit of \$575.00 at the beginning of the tenancy.

The Landlord testified the 1 Month Notice was served on the Tenant by posting a copy on the door of the Tenants' rental unit on September 30, 2016. The Tenants' Application confirms receipt of the 1 Month Notice on October 4, 2016.

On behalf of the Landlord, S.L. testified there have been a number of issues with the Tenants. First, the Landlord has received complaints of noise emanating from the Tenants' rental unit. Specifically, the tenant above submitted a complaint through the Tenant Portal. The complaint, a copy of which was submitted with the Landlord's documentary evidence, confirmed the tenant above was woken up at 1:00 a.m. by loud noises that included conversation, walking and television. In a letter dated March 23, 2016, the Landlord advised the Tenants of the complaint and noted that "excessive noise" was contrary to the lease agreement. The Tenants were advised as follows:

This serves as a first warning. Another occurrence of behaviour related to above...will lead to final warning and penalties up to lease termination.

[Reproduced as written.]

Subsequently, on or about September 6, 2016, the same tenant complained of "loud noises during nights so irritatingly that I am not able to sleep and if I am, I wake up all of a sudden while my heart is beating quickly."

In reply, the Tenant M.N. testified the Tenants are quiet and keep to themselves. She noted that the walls of the rental unit are very thin and suggested that the sleeping habits of the tenant above are unusual. Further, the Tenant M.N. stated the Tenants purchased a television only two months ago.

Second, the Landlord has received complaints relating to the Tenants' dog. A warning letter to the Tenants, dated July 19, 2016, submitted with the Landlord's documentary evidence, summarizes the complaints:

Even as recently as today July 19, 2016, your dog chased and barked at [the Landlord's tradesperson] who was at the building for a repair. Fortunately, no harm was done....

Also brought to our attention is that you have not been cleaning up after your dog. Dog waste on the building premises is unsightly, smelly and a health hazard. This also serves as a warning. Please make sure that you pick up after your dog.

Finally, it has been reported that your dog barks at various times throughout the day and disrupts the quietude of neighbouring units. Please also ensure that your dog remains quiet...especially between the hours of 10pm to 9am.

...

Failure to comply with the terms of your Agreement will result in a \$200 fine for each above-mentioned infraction and/or result in eviction.

[Reproduced as written.]

In reply, the Tenant M.N. testified the Tenants have only one dog. She testified that the Landlord's agent, who was painting, entered the rental unit without notice. The dog barked at the worker but was quickly called back. With respect to the Landlord's claim the Tenants do not clean up after their dog, the Tenant M.N. testified she has been more diligent about cleaning up after her dog since receiving the notice.

Third, the Landlord received complaints of smoke emanating from the Tenants' rental unit, contrary to the tenancy agreement. Accordingly, on July 19, 2016, the Landlord issued another warning letter to the Tenants advising "[t]he smoke and smell spreads and is bothersome to neighbouring units." The letter also referred to "ongoing noise after hours", referencing the letter dated March 23, 2016, described above.

In reply, the Tenant M.N. testified she has cancer and does not smoke. She suggested the smell of smoke may be coming from other rental units.

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 wished to end the tenancy on the bases that the Tenants have allowed an unreasonable number of occupants in the rental unit; that the Tenants or a person permitted on the property by the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord; and that the Tenants have engaged in illegal activity that has, or is likely to, damage the Landlord's property or adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

On behalf of the Landlord, S.L. provided oral testimony and referred to documentary evidence describing a number of incidents throughout the tenancy. Specifically, she referred to repeated noise complaints, an incident involving an aggressive dog, and smoking in the rental unit contrary to the tenancy agreement. The incidents were followed up by written warnings. Each of these, she submitted, has disrupted other tenants or the Landlord.

The Tenant M.N. denied the Landlord's allegation of excessive noise, suggesting the Tenants are quiet and keep to themselves. While she acknowledged the dog barked at the Landlord's agent, she said it occurred because the Landlord's agent entered the rental unit without giving notice. Finally, the Tenant M.N. testified she has cancer and never smokes in the rental unit.

In this case, I find that noise emanating from the rental unit has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The noise has resulted in at least two written complaints to the Landlord, which were followed up with at least two written notices to the Tenants.

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 1 Month 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 Tenants.

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: December 05, 2016

Residential Tenancy Branch