



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*;

Both the landlord and the tenants attended the hearing. The landlord was represented at the hearing by building manager, S.G. and office manager, I.Z, (the "landlords"). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The landlords stated that a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was posted on the tenants' door on February 27, 2017. The tenants confirmed receipt of this 1 Month Notice and of the landlords' evidentiary package. Pursuant to section 88 of the *Act* the tenants are found to have been served with the landlords' 1 Month Notice and evidentiary package.

The landlords confirmed receipt of the Tenants' Application for Dispute Resolution package ("Tenants Application"). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Tenants Application.

Issue(s) to be Decided

Can the tenants cancel a 1 Month Notice to End Tenancy? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

Testimony was provided by the landlords that this tenancy began on December 15, 2015. Rent is \$900.00 per month and a security deposit of \$450.00 continues to be held by the landlords.

The landlords explained that they issued a 1 Month Notice to the tenants based on two reasons:

The tenant has:

- i) significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- ii) significantly jeopardized the health or safety or lawful right or another occupant or the landlord.

The landlords explained in written submissions and in their oral testimony that they have received numerous complaints from other occupants of the rental building concerning the behaviour of the tenants appearing as applicants in this hearing. These other occupants have provided the landlords with letters describing the behaviour of the tenants.

The tenants themselves do not deny that they have had incidents in the past with certain people in the building; however, they argued that their actions were justified because of ongoing noise produced from an upstairs neighbour, and due to the fact that the building in question is very old and lacks sufficient sound proofing. They stated that the former occupant of an above unit had her grandson in the rental unit and they blamed him for moving furniture in the middle of the night, as well as various other incidents involving what they deemed “unreasonable” noise.

The tenants stated that since the occupant above vacated the rental unit in January 2017 they have not had any further complaints with regards to noise.

As part of their evidentiary package the landlords included letters to the tenants dated:

- May 30, 2016 from the building manager
- February 7, 2017 from the building manager

These letters outlined complaints they have received, and the steps that have been taken by the landlords to rectify any issues with the flooring in the above unit.

The landlords also produced as part of their evidentiary hearing package, written submissions from the building manager, the office manager, the assistant manager, the occupant of a rental unit above the tenant, the former occupant of a rental unit above the tenant, and occupants of a nearby rental unit. These submissions spoke to the

harassment that the occupants in the building have experienced at the hands of the tenants, as well as the confrontations that the management have encountered with the tenants.

In a letter dated February 25, 2017, the former occupant of a unit in the building explained that she was “forced to move out in Jan 2017 because of harassment from the above [207]” She continued by describing how she is an elderly retired woman who has experienced constant banging on the ceiling, knocking on the doors and yelling by the tenants in question. In her written submissions, the former tenant of an above rental unit denies ever moving furniture in the evenings.

A letter dated March 1, 2017 from the current occupant of an upper level suite explains how the “tenant who lives directly under my suite has been harassing us from the first day of our moving in.” In her letter, the current occupant describes in great detail several incidents that involved yelling and banging on her suite from the tenants. She also outlined a confrontation that involved her mother and the tenants concerning carpet cleaning. She explained that any unpacking or cleaning was always done within reasonable hours and within the parameters of the buildings rules preventing any noise from occurring between 11PM and 8AM. Out of an abundance of caution, and in response to the sensitivities of the tenants, the current occupants of an upper rental unit explained in her letter how she ceased unpacking at 9PM one evening and at 8:30PM on another.

The tenants disputed these times and alleged that the tenants above were cleaning in the early morning and into the late evening. In addition, they took issue with the carpet cleaner that they stated ran from “7AM to 7PM.”

Another letter was submitted to the hearing by the occupant of a neighbouring unit. This letter describes confrontations that the tenants have had with the occupants of the building. It also documents an incident the occupants of a nearby rental unit had with the tenants as a result of playing their music during the middle of the afternoon.

In addition to these letters from the occupants of the building, the landlords themselves have faced complaints from the tenants concerning noise levels associated with painting work that occurred during the middle of the day. Landlord S.G. noted that “we even gave up the idea of replacing the old carpet with laminate floor to prevent further noises.” In her letter, S.G. states, “I visited the senior (former occupant of upper floor unit) several times, and she explained to me that she was just walking in her home. The people from downstairs would bang their ceiling as long as there was a sound, which has been a burden to her peaceful life...we tried by any means possible to reduce the sound level, such as inspecting the flooring material of unit ** (anonymized).”

Analysis – Order of Possession

Section 46 of the *Act* states that a tenancy may be ended when the tenant...has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Based on the testimony presented at the hearing, along with the written submissions produced as part of the landlords' evidentiary package, it is evident that multiple incidents have occurred between the tenants and other occupants of the building, as well as the building's management. The question is therefore whether or not these incidents can be classified as being of "significant" or "unreasonable" in nature.

During the course of the hearing, the landlords explained that they had met with the tenants on many occasions to discuss proper channels of communication through which they could express their concerns with noise in the building. In addition, the landlords met with the former occupant of the floor above numerous times to discuss any noise issues that may have emanated from the rental unit. Finally, the landlords called on the services of a flooring expert to examine the above rental unit to determine if there were any flaws with the floor. Despite these efforts, the tenants continued to lodge complaints about the noise against the other occupants of the building and the landlords.

The landlords went as far as issuing a letter to the tenants, explaining that a new person would be moving into the unit above in February 2017. Despite this, the tenants continued to direct their frustrations with noise to the other occupants of the building.

All of these steps indicate that the landlords took the noise complaints of the tenants seriously and made concerted attempts to mitigate the noise.

The tenants have acknowledged that incidents occurred in the past but maintained that these problems were isolated to the former occupant above their unit and they have had no further issues with any persons in the building. Based on testimony from the landlords and the written submissions of the other occupants this has been demonstrated not to be true.

I find that the tenants have significantly interfered with and unreasonably disturbed the other occupants of the residential property to the extent that the landlords were justified in issuing their 1 Month Notice for Cause. I therefore dismiss the tenant's application to cancel the landlord's 1 Month Notice. Pursuant to section 55(1)(b) of the *Act* which states, *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...the director during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. The landlords will therefore be granted an Order of Possession pursuant to section 46 of the *Act*.

As this Notice to End Tenancy on February 27, 2017 and was posted on the door of the tenants unit, it is deemed to have been served pursuant to section 90 of the *Act* on March 1, 2017. The corrected effective date of the Notice to End Tenancy is therefore April 30, 2017.

Conclusion

I dismiss the tenants' application to cancel the 1 Month Notice. I grant the landlords an Order of Possession to be effective by 1:00 p.m. on April 30, 2017. Should the tenants 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 10, 2017

Residential Tenancy Branch