



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNC, FF

For the landlord – OPC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel a One Month Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for cause and to recover the filing fee from the tenants for the cost of this application.

The female tenant (CW) and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence which both party declined. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the One Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2016 for a fixed term tenancy that is not due to end until July 01, 2017. Rent for this unit is \$1,400.00 per month due on the first of each month. The tenants paid a security deposit of \$700.00 on June 30, 2016.

The landlord testified that the tenants were served a One Month Notice to End Tenancy for cause (the Notice) on March 24, 2017. A copy of the Notice has been provided in documentary evidence. The Notice has an effective date of April 30, 2017 and provides the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit*
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*
 - (i) Damaged the landlords' property*
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
- 3) The tenant has assigned or sublet the rental unit without the landlords' written consent.*

The landlord testified that the tenancy agreement allows for two tenants only to reside in the rental unit; however, in October, 2016 when the landlord went around to the unit to speak to the tenants, the landlord found out that someone else was also living in the unit. This person answered the door to the landlord and when asked by the landlord who he was he responded that he was CW's cousin. The landlord had also been informed by the Strata's secretary that another person was living in the unit as the Strata had issue about them parking their truck in the lot. The landlord referred to email evidence from the Strata secretary concerning this occupant and the parking of vehicles. The landlord testified that this occupant appeared to move out at the end of March, 2017 and another occupant was then seen at the unit and was parking a black vehicle in the lot. This is also evident in the emails provided by the landlord from the Strata.

The landlord testified that when she went to the unit in October, 2016 she first had an indication that the tenants or a person permitted on the property by the tenants was engaging in an illegal activity and smoking pot on the preemies. When the tenants' first occupant had opened the door to the landlord the unit reeked of pot. A week later the landlord met with the tenants and broached this topic with them. The landlord explained that this was a non-smoking unit. The tenants stated that they did not smoke cigarettes or pot and that maybe it was the other occupant. They said they had told him not to do so. Later in March when the landlord entered

the unit for a walk through as arranged with the male tenant she saw a packet of cigarettes by CW's purse and there was evidence of a bong in the pot with roll up papers and an ashtray all on a tray. CW was also seen by neighbours leaving the unit with a lit cigarette. At the start of the tenancy the tenants has assured the landlord that they did not smoke and neither did their friends. The landlord had said if friends come round that do smoke they should do so on the deck as neighbours also smoke on their decks.

The landlord testified that when she entered the unit on March 12, 2017 the smell of pot was strong. The landlord also referred to an email from the tenant living in the unit below who has stated that they had to go upstairs to talk to the tenants about noise and when the tenants opened their door the unit reeked of the smell of pot.

The landlord testified that the tenants have sublet the rental unit without written consent from the landlord since September, 2016. The landlord discussed this first occupant staying in the unit and was told by the female tenant that he was her cousin and was only staying for a few weeks as he was in school. The landlord thought he would have left after a few weeks or by mid-November at the latest. The female tenant informed the landlord that he had his exams in December and the landlord also expected him to leave after that but he remained there until the end of March. The landlord testified that she was informed by the Strata that this occupant had started to park his vehicle on the street.

The landlord testified that as the tenants have given the landlord just cause to end the tenancy the landlord seeks an Order of Possession effective on May 31, 2017. The landlord also seeks to recover the filing fee of \$100.00 from the tenants.

The tenants disputed the landlord's claim. CW testified that the first occupant only stayed at the unit during the week and went back to Vancouver at the weekends. He did not pay any rent but CW agreed he was there in the unit on weekdays from September, 2016 to the end of March, 2017. CW testified that she works double shifts seven days a week and does not really know how often this other person is at the unit, who the landlord claims is another occupant from March, 2017. CW testified that she thinks he only visits the tenants two or three times a week and also stays with his dad. That person is building a house with the male tenant so he is often at their unit.

CW testified that the landlord did say they could smoke on the deck and CW has only recently started smoking. The landlord's photograph showing a picture of a packet of cigarettes is not evidence that the tenants smoke inside the unit. The other tenant DB has a licence to smoke medical marijuana. CW agreed that she has not shown this to the landlord or provided it in documentary evidence. CW testified that there is a bong in the unit that belonged to the first occupant and he left it at the unit. He used this bong outside as he has told not to smoke in the unit.

The tenant testified that they have not sublet the unit to other occupants.

The tenants seek to have the Notice set aside and to recover their filing fee of \$100.00.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find the landlord's evidence more credible than that of the tenants regarding the unreasonable number of occupants in the rental unit. The landlord has provided sufficient evidence to meet the burden of proof that the tenants have allowed other occupants to reside in the rental unit over a period of months since September, 2016. I am satisfied from this evidence, such as the landlord's testimony and email evidence from the secretary of the Strata, that at least one other occupant and likely two other occupants have been allowed to reside in the rental unit.

The tenancy agreement is for two tenants only and therefore this reason standing alone is sufficient to end the tenancy.

I will however also address the illegal activities. I find there is insufficient evidence that the tenants have engaged in an illegal activity that has damaged the landlord's property as the tenants' photographic evidence shows the unit to be clean and in a good state of repair; however, I am satisfied that the landlord has sufficient evidence to show it is likely the tenants or their guests have been smoking marijuana inside the unit. CW testified that she works double shifts, seven days a week so may not always be at the unit to witness what occurs there and if the tenant DB has a license to smoke medical marijuana then this should have been declared to the landlord at the start of the tenancy and at least provided in documentary evidence for this hearing. The tenants do have the responsibility for the actions of their guests and I find it highly unlikely, given the evidence before me, that either the tenants or their guests were smoking on the deck when the unit reeked of the smell of pot when both the landlord and a neighbor went to the unit.

While I am unclear from the evidence how this activity has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property the smoking of marijuana is still considered to be an illegal activity in British Columbia.

I find at least one reason on the Notice is upheld and therefore I find in favor of the landlord's application for an Order of Possession to be effective as requested on May 31, 2017.

The tenants' application to have the Notice cancelled is therefore dismissed.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*. The landlord may deduct this amount from the security deposit leaving a balance of \$600.00 to be dealt with at the end of the tenancy pursuant to s. 38 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord has been issued an Order of Possession effective **on May 31, 2017** pursuant to section 55(1) of the *Act*. This Order must be served on the tenants. If the tenants remain in Possession of the rental unit and do not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia 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: May 08, 2017

Residential Tenancy Branch