



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated May 17, 2017 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make emergency repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord's three agents (collectively "landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. All three landlord agents confirmed that they were the property managers for the landlord company named in this application and that they had authority to speak on its behalf at this hearing. This hearing lasted approximately 65 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenants stated that they did not receive the landlord's written evidence package, which the landlord confirmed was served by posting to the tenants' rental unit door on

July 5, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's written evidence package on July 8, 2017, three days after its posting. I notified both parties that I would consider the evidence at the hearing because it was deemed received by the tenants more than seven days prior to the hearing, in accordance with Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

The tenants confirmed receipt of the landlord's 1 Month Notice but could not recall the exact date. The landlord provided a copy of a Canada Post tracking report that indicates that the 1 Month Notice was sent out by registered mail on May 19, 2017 and the tenants received and signed for it on May 25, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 1 Month Notice on May 24, 2017, five days after its registered mailing.

Issue to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee paid for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2016. Monthly rent in the amount of \$762.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenants and the landlord continues to retain

this deposit. The tenants continue to reside in the rental unit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord issued the 1 Month Notice, with an effective move-out date of June 30, 2017, for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
 - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
 - *jeopardize a lawful right or interest of another occupant or the landlord.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The tenants seek to cancel the landlord's 1 Month Notice and to recover the \$100.00 filing fee. The tenants also request that emergency repairs be completed in the rental unit and seek monetary compensation of \$700.00.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants were deemed to have received the 1 Month Notice on May 24, 2017, and filed their application to dispute it on May 30, 2017. Therefore, they are within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord proved that the tenants significantly interfered and unreasonably disturbed other occupants in the rental building.

I accept the testimony of the landlord who confirmed that the tenants had hostile attitudes towards other occupants in the rental building, that they would stop occupants in the common area hallways and accuse them of smoking and tell them to stop, that they would pound on the doors of other occupants to accuse them of noise, smoking and being alcoholics, and that they caused numerous disturbances to occupants in the

rental building, causing them to be fearful of the tenants. I accept the landlord's written evidence that at least three other neighbours complained to the landlord by way of email, about the tenants' behaviour. I also accept the landlord's written letters which were sent to the tenants in October 2016 and again in February 2017, warning them that their tenancy could end because of their behavior. While the tenants complained that other occupants were causing noise and disturbing them, I accept the landlord's testimony that the landlord attempted to deal with the tenants' complaints and discovered that it was the tenants that were causing the disturbances to other occupants.

As I have found that one of the reasons indicated on the landlord's 1 Month Notice is valid, I do not need to consider the other reasons on the notice.

Therefore, I dismiss the tenants' application to cancel the landlord's 1 Month Notice, dated May 17, 2017. As per section 55 of the *Act*, if I dismiss the tenants' application to cancel the 1 Month Notice, I must issue an order of possession to the landlord, provided that the 1 Month Notice complies with section 52 of the *Act*. I find that the 1 Month Notice complies with section 52 of the *Act*. I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective at 1:00 p.m. on July 31, 2017. Both parties agreed that the tenants paid rent in full for July 2017. I find that the tenants are therefore entitled to possession of the unit until the end of July 2017.

As this tenancy is not continuing, I dismiss the tenants' application for emergency repairs, without leave to reapply.

I dismiss the tenants' application for transit costs of \$16.50 and personal time costs of \$47.62, as the only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

I dismiss the tenants' application for \$200.00 for a lack of hot water, noise and neighbours smoking at the rental property. I find that the tenants failed to show how they arrived at this amount and were unable to justify the number.

I dismiss the tenants' application for \$25.00 in hydro and \$25.00 for television start-up costs when they moved into the unit, as well as moving costs of \$385.88. I find that the tenants failed to show that their rental unit was not suitable for residential use, which is the reason why they claimed for the above costs.

I dismiss the tenants' application for an order requiring the landlord to comply the *Act*, *Regulation* or tenancy agreement because they did not provide any evidence about this claim at the hearing.

As the tenants were not successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on July 31, 2017**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenants' entire application is dismissed without leave to reapply.

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: July 27, 2017

Residential Tenancy Branch