



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 June 9, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated May 31, 2017, with an effective date of June 30, 2017 (the "One Month Notice"); and
- other unspecified relief.

The Tenants were both in attendance at the hearing although J.M. did not participate. The Landlord attended the hearing on her own behalf. All parties giving testimony provided a solemn affirmation.

On behalf of the Tenants, D.S. confirmed the Application package was served on the Landlord by registered mail on June 16, 2017. The Tenants submitted a Canada Post registered mail receipt in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Application package is deemed to have been received by the Landlord on June 21, 2017.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenants by registered mail on July 19, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlord's documentary evidence is deemed to have been received by the Tenants on July 24, 2017.

No further issues were raised with respect to service and receipt of the above documents. The parties were provided a full 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.

Issue to be Determined

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

Background and Evidence

The parties agreed the tenancy began on August 1, 2010. Currently, rent in the amount of \$786.00 per month is due on the first day of each month. The Landlord holds a security deposit in the amount of \$400.00.

The Landlord issued the One Month Notice on the basis 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. Specifically, the Landlord provided testimony outlining the Tenants' role in what she described as ongoing noise issues between the tenants of several units in the building. First, the Landlord provided testimony concerning a noise complaint she received related to an incident on December 28, 2016. In a letter to the Tenants, dated January 9, 2017, the Landlord advised she had received a complaint of noise emanating from the Tenants' unit until about 2:00 a.m. In reply, D.S. acknowledged the Tenants and guests "may have gotten a little loud" but testified that she let the Landlord know in advance and that it was the Christmas season.

Second, in response to further noise issues, the Landlord sent a letter, dated January 24, 2017. The letter was addressed to "All Tenants" who had been involved in the ongoing noise issues. The letter includes the following bolded and underlined subject line: "RE: Noise & Disturbance – FINAL WARNING". In it, the Landlord referred to multiple noise and disturbance complaints from several units over the past couple of months", and suggested future instances may be met with a notice to end tenancy.

Third, the Landlord testified that police responded to a complaint about noise coming from the Tenants' unit in May 2017. According to the Landlord, the complaint originated from another tenant in the building. In reply, D.S. testified that J.M. had some friends over to play cards. She confirmed they were listening to music and drinking beer, but advised that the gathering was "shut down" by the time police arrived around 10:30 p.m.

Finally, the Landlord testified that she is tired of dealing with complaints of noise from the Tenants' unit, and the ongoing issues between the Tenants and other occupants of the building.

In light of the above, the Landlord issued the One Month Notice, which indicates it was served on the Tenants, in person, on May 31, 2017.

In reply to the Landlord's testimony, D.S. stated that issues began when other tenants moved into the building in or about September 2016. Prior to that time, she stated she had a perfect tenancy and no complaints against her. In addition, D.S. indicated that there were "no problems" for a few months after receiving the Landlord's letter dated January 24, 2017, until the noise complaint that resulted in police attendance.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to end a tenancy for cause by issuing a notice to end tenancy. The burden is on the landlord to demonstrate sufficient justification for ending the tenancy. In this case, the Landlord issued the One Month Notice on the basis that the Tenants, or persons permitted on the property by the Tenants, have significantly interfered with or unreasonably disturbed another occupant or the Landlord. I find it is more likely than not that noise emanating from the Tenants' rental unit has unreasonably disturbed other occupants and the Landlord. I inferred from the Landlord's tone during the hearing that she is tired and frustrated by the ongoing noise complaints, and the bickering between the Tenants and other occupants of the building. That other tenants in the building may have played a part in the noise issues is of no consequence. My Decision addresses only the issues related to the Tenants. Accordingly, I find that the One Month Notice is upheld and the Tenants' Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the One Month Notice was submitted with the Tenants' documentary evidence. I find the One Month Notice complies with section 52 of the *Act*. Accordingly, pursuant to 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. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenants. The order of possession 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: August 10, 2017

Residential Tenancy Branch