



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") filed by the Tenants under the *Residential Tenancy Act* (the "Act"), seeking to cancel a One Month Notice to End Tenancy for Cause (the "One Month Notice") and recovery of the \$100.00 filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlords. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Tenants, a copy of the decision will be e-mailed to them at the e-mail address provided in the hearing. At the request of the Landlords, a copy of the decision and copies of any applicable Order of Possession will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

At the outset of the hearing I identified that the P.Z., who was present in the hearing, was not listed on the Application as a Tenant or a Respondent. The Applicant, N.Z., testified that P.Z. is their spouse and also a tenant of the rental unit and the Landlords agreed. As a result, N.Z. and P.Z. will be referred to collectively as the "Tenants" in my decision.

The One Month Notice which is the subject of this dispute was not before me for consideration in the hearing. As a result, I accepted the affirmed testimony of the parties regarding the form and content of the One Month Notice and requested that a copy be submitted to the branch by 4:30 P.M. on the date of the hearing. A One Month Notice was submitted for my consideration which matched the testimony provided by the parties in the hearing. As a result, I accepted it for consideration in rendering my decision.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Background and Evidence

Although there is no written tenancy agreement in place, the parties agreed that the month to month tenancy began on December 1, 2016, and that rent in the amount of \$1,500.00 is due on the first day of each month.

The Landlords testified that they, and the other occupants living on the property, have had significant issues with the Tenants since the start of their tenancy in December 2016. As a result, the Landlords testified that a One Month Notice was personally served on the Tenants on September 21, 2017, which the Tenants acknowledged receiving.

The One Month Notice in the documentary evidence before me, dated September 12, 2017, has an effective vacancy date of October 31, 2017, and gives the following reasons for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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; and
- The tenant has breached a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

While both parties submitted significant documentary evidence and testimony for consideration, I have summarized the relevant evidence and the positions of the parties below.

The parties provided opposing testimony and evidence regarding who is entitled to the possession of a shed on the property and whether or not the use of this shed by the Tenants is a breach of a material term of the tenancy agreement.

The Landlords alleged that the Tenants put the property at significant risk by:

- Completing electrical work without permission or the use of a certified electrician;
- Driving heavy vehicles over an unstable bridge on the property contrary to the direction of the Landlords;
- Stacking firewood directly against the house despite explicit direction from the Landlords not to do this at the recommendation of a pest control company;
- Refusing to move a compost bin from beside the house which has attracted bears;

- Burning unsuitable wood in the wood stove (such as decaying wood, painted and pressure treated wood, and wood with nails in it) and keeping the woodstove at an unsafe temperature resulting in a fire risk to the property; and
- Placing a storage shed onto the deck without permission, proper support, or proper ventilation for the deck materials below.

The Tenants denied that the location of their compost bin is unsafe and testified that they do not burn unsuitable wood or keep the woodstove at an unsafe temperature. The Tenants acknowledged being advised by the Landlords not to drive heavy vehicles over the bridge for safety reasons and admitted that they have driven vehicles over it and backed their trailer onto it on occasion in order to turn it around. However, the Tenants argued that the other occupants of the property regularly do the same. The Tenants admitted to placing a storage shed on the back deck without permission but denied that this is a risk to the property as the shed is light and allows for ventilation under the floor.

The Tenants also acknowledged awareness of a rodent problem on the property and admitted to storing firewood directly against the house despite explicit direction from the Landlords not to do so. However, the Tenants testified that there was no other dry place to store it and stated that when they were advised to move the wood by the Landlords, they did so immediately. The Tenants also admitted to replacing an electrical switch without the permission of the Landlords or the use of an electrician.

Further to this the Landlords testified that the Tenants have unreasonably disturbed or significantly interfered with them and the other occupants of the property and engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant by:

- Continuously behaving in an argumentative and disrespectful manner;
- Occupying a shed that belongs to the other occupants of the property without permission;
- Trespassing on a neighbouring property to cut wood; and
- Unlawfully entering the residence of other occupants on the property without their express permission.

The Tenants denied behaving in an argumentative and disrespectful manner and testified that it is the Landlords who have behaved inappropriately towards them. The Tenants admitted to occupying a shed on the property but denied that this is a breach of their tenancy agreement and argued that they had permission from the Landlords to use it. Although the Landlords admitted to granting the Tenants permission to use the shed, they stated that the usage was meant to be temporary as the shed actually belongs to the other occupants of the property under their tenancy agreement. One of the Tenants also admitted to entering the residence of other occupants on the property without their express permission but argued that it was a misunderstanding and not a big deal. The Tenants also argued that the Landlords should be estopped from using this incident to end the Tenancy as it happened some time ago and they were not aware that it was a significant issue for the occupants of that unit until recently.

Analysis

While the Tenants denied or refuted many of the allegations made by the Landlords, ultimately the Tenants acknowledged making electrical changes to the rental unit without the permission of the

Landlords or the use of an electrician, and stacking firewood directly against the side of the home despite being aware of the rodent problem and being explicitly advised by the Landlords not to do so. As a result, I am satisfied that the Landlords had cause under section 47 of the *Act* to serve the One Month Notice because the actions of the Tenants put the Landlord's property at significant risk.

Based on the above, the Tenant's Application seeking to cancel the One Month Notice is dismissed without leave to reapply. As the Tenants Application is dismissed, I must now consider if the Landlords have issued a notice to end tenancy that is compliant with section 52 of the *Act*. The One Month Notice in the documentary evidence before me is signed and dated by the Landlords, gives the address of the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form. As a result, I find that the One Month Notice complies with section 52 of the *Act*.

Section 55 of the *Act* requires that I issue an Order of Possession to the Landlords if the Tenants' Application is dismissed and the notice to end tenancy complies with section 52 of the *Act*. As a result, the Landlords are entitled to an Order of Possession. As the effective date of the One Month Notice has passed and the Landlords have accepted December rent for use and occupancy of the rental unit, the Order of Possession will be effective at 1:00 P.M. on December 31, 2017.

Although documentary evidence and testimony was provided by both parties regarding the other reasons for which the One Month Notice was issued, such as estoppel, I have made the finding the tenancy will end based on the above reasons, and therefore, it is not necessary to consider the other grounds raised in the hearing.

As the Tenants were not successful in their Application, I decline to grant them recovery of the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. December 31, 2017, after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this 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: December 14, 2017

Residential Tenancy Branch