



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application for cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the *Act*").

The landlords, the landlord's assistant and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlords' legal counsel (the landlord) stated that they would be the primary speaker on behalf of the landlords and Tenant S.B.N. (the tenant) stated that he would be the primary speaker on behalf of the tenants.

While I have turned my mind to all the documentary evidence and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) which was sent by e-mail on October 26, 2017. Although not served in accordance with section 89 of the *Act*, I find the landlord did not dispute service of the Application and that it was duly served to the landlord in accordance with section 71 of the *Act*.

The tenant confirmed that they did not submit any evidence.

The landlord had the landlord's assistant testify that they served the tenant with the landlords' first evidentiary package on November 03, 2017. The tenant confirmed that they received this evidence. In accordance with section 88 of the *Act*, I find the tenants were duly served with the landlords' evidence.

The landlord testified that a second evidentiary package was served to the tenants one day prior to the hearing taking place.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. I find that the landlords did not serve the tenants with their second evidence package in accordance with Rule 3.15 and that the tenants may be prejudiced by this as they did not have a chance to respond to the landlord's evidence. For this reason the landlord's second evidence package is not accepted for consideration.

The tenant confirmed that they received the One Month Notice which was personally served to them on October 16, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the One Month Notice.

Issue(s) to be Decided

Should the landlords' One Month Notice be cancelled?

If not, are the landlords entitled to an Order of Possession?

Background and Evidence

The landlord testified that that this tenancy commenced on August 15, 2016, with a monthly rent of \$1,600.00, due on the first day of each month. The landlord confirmed that they continue to retain a security deposit in the amount of \$1,000.00.

A copy of the signed October 16, 2017, One Month Notice was entered into evidence by the landlord. In the One Month Notice, requiring the tenant to end this tenancy by November 15, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

The landlord also provided into evidence:

- a copy of a 'Description and Reasons for Landlord and Tenant dispute giving a timeline of events from the start of the tenancy to the issuance of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) to the tenants dated October 26, 2017;

- a copy of a contract between a real estate company and the landlords which begins in May 2017 and expires on August 3, 2017;
- a copy of a video of an altercation outside of a house with a realtor sign in front of it, with one of the parties in the video acting aggressively to the others and being removed by another party from the situation; and
- a copy of a text from Tenant A.N. to the landlord acknowledging a request from the landlord for a showing of the house to prospective buyers and stating that it is ok to come and see the house for the showing.

The landlord testified that the tenants rent the upper level of a two storey house on a month to month tenancy. The landlord submitted that they had signed a contract with the tenant, who is also a licensed realtor, to sell the house that the tenants lived in the upper level of. The landlord stated that this realtor contract with the tenant expired on August 31, 2017, and that the tenant did not have any success selling the house. The landlord testified that another realtor was hired when the realtor contract with the tenant expired at the end of August 2017.

The landlord submitted that during the showing of the house the tenant was acting aggressively, shouting and swearing to the prospective buyers and the realtor, pushing them out of the property and stating that the tenants would never leave the house. The landlord stated that the tenant would not allow access to the lower level of the house even though they only rent the upper level. The landlord testified that the tenant assaulted the other realtor who was showing the house for the landlords. The landlord maintained that this interference impacted the sale of the house and that the landlords received a lower offer than they otherwise would have received if not for the actions of the tenant.

The landlord stated that shortly after this incident of aggressive behaviour of the tenant at the showing, the landlords made the determination to issue the One Month Notice to the tenants. The landlord submitted that they have not received the monthly rent for November 2017, December 2017 and January 2018. The landlord testified that they did issue a Two Month Notice to the tenants upon sale of the house and had informed the tenants that they would not ask for the monthly rent for November 2017 and December 2017 if the tenants vacated the property for December 31, 2017. The landlord stated that the tenants are still in the rental unit as of the date of the hearing.

The tenant read from a prepared affidavit which indicated that he was restricted from providing any testimony due to his business relationship with the landlords and required a signed waiver from the landlords to release him from his confidentiality agreement.

The landlord maintained that the realtor contract with the tenant expired on August 31, 2017, and that the landlords no longer have any business relationship with the tenant other than a tenancy agreement.

Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on October 25, 2017, and since I have found that the One Month Notice was served to the tenant on October 16, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find that the landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

I have reviewed all documentary evidence. Based on the landlords' written evidence and undisputed affirmed testimony, as well as the balance of probabilities, I find that the tenant has significantly interfered with the landlords.

I find that the tenant did not provide any testimony or written evidence to refute the affirmed testimony provided by the landlords. I accept the landlords' testimony that the tenant was aggressive, verbally and physically, with the new realtor and the prospective buyers and significantly interfered with the landlords' right to sell their house. I find that the tenant did not allow the prospective buyers to view the whole house and that this impacted the ability of the landlords to receive a fair offer for the house as the buyers had to make an offer based on the limited viewing that they had.

I find the landlords have sufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason, the tenants' Application to set aside the One Month Notice is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession as long as the notice to end tenancy complies with section 52 of the *Act*. I find that the One Month Notice is in compliance with section 52 of the *Act*.

For these reasons, I grant a two day Order of Possession to the landlords.

Conclusion

I dismiss the tenants' Application to cancel the landlords' One Month Notice dated October 16, 2017, without leave to reapply.

I grant an Order of Possession to the landlords **effective two days after service of this Order** on the tenant. 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.

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: January 12, 2018

Residential Tenancy Branch