



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 19, 2018.

Both the Landlord and Tenants attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. The Landlord and the Tenants were each affirmed to be truthful in their testimony.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

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 is described in this Decision.

Issue(s) to be Decided

- Should the Notice issued on February 19, 2018, be cancelled?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties testified that the tenancy began in October 2016, as a one year fixed term tenancy, which converted into a month to month tenancy at the end of the first year. Rent in the amount of \$1,248.00 is to be paid by the first day of each month, and the Tenants paid the Landlord a \$600.00 security deposit. The Tenants provided a copy of the tenancy agreement.

The Landlord testified that he issued the Notice on February 19, 2018. The reasons checked off by the Landlord within the Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the landlord's property at significant risk
- Tenant has caused extraordinary damage to the unit/site property /park

The Notice states the Tenants must move out of the rental unit by March 20, 2018. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Tenants confirmed receiving the Notice, and they applied to dispute the Notice on February 26, 2018.

Both parties testified and offered evidence regarding smoking in the rental unit and on the grounds. Upon review of the tenancy agreement, I noted that there were no conditions written into the tenancy agreement regarding smoking. Therefore, I find that smoking is not a material term of this tenancy and that the testimony regarding smoking is irrelevant to this matter.

LANDLORDS EVIDENCE

The Landlord testified that many incidents led to the issuing of the Notice and that he had been in contact with the Tenants, via text message, throughout the tenancy regarding the complaints he was receiving and to issue warnings to the Tenants.

The Landlord provided the text message history between himself and the Tenants, showing that Tenants had been given several warnings regarding their disruptive behaviour.

- January 13, 2017, GJD sent a text message to the Landlord, apologizing for his actions while drunk.
- The Landlord replied by issuing a warning, stating that the loud music and violent arguments coming from the Tenants' unit was not acceptable and if it continued he would have to end their tenancy.

- November 28, 2017, the Landlord sent a text to GJD, stating that he had received several complaints regarding loud noise coming from the unit and that he had been notified that the police had attended the unit several times.
- The Landlord issued another warning that this behaviour from the Tenants needed to stop and that "this is your last warning."
- February 18, 2018, the Landlord texted GJD stating that he had received another complaint regarding another loud argument coming from their unit and that the police had attended again and had "busted down your window."
- The Landlord stated that due to this last event he would be ending their tenancy.

The Landlord testified that he had received many complaints from the neighbours who occupy the other units in the building. The complainants recounted loud noise, fighting, and the numbers times that the police had attended the Tenants' rental unit. The Landlord also provided in documentary evidence two written statements from other occupants of the building.

- 1) Introduced into evidence was a letter of complaint from the neighbour next door.
 - The letter stated that she had witnessed the police attend the rental unit twice in 2017 and once in 2018, regarding screaming and yelling coming from the Tenants' unit.
 - She stated that the police would repeatedly knock on the Tenants' door.
 - She noted that the 2018 police visit consisted of three police cars, loud knocking on the door, and calls from the police for the Tenants to "open the door or else."
 - She also wrote that this was "concerning to all for our safety."
- 2) Introduced into evidence was a letter of complaint from the upstairs neighbour.
 - The letter stated that the police had attended the Tenants' rental unit on three separate occasions due to loud altercations.
 - She had witnessed GJD being taken away by police twice.
 - The third visit by police resulted in the police breaking into unit from the front window to gain access.
 - That GJD had also sent her a text, saying that the police attending his unit was her fault.
 - She also stated in her letter that she was worried for her safety and that her son now wants to move out and go live with his father due to the Tenants behaviour towards him.

The Landlord testified the Tenants had damaged the rental unit by punching a hole in the bathroom wall and breaking the front window of the rental unit.

TENANTS EVIDENCE

The Tenants testified that at the police had attended the rental unit twice and that on both occasions they were awoken to find the police inside their home. They testified that they had not heard the police knocking at the door and were upset that the police had been called, as they were quiet Tenants who were in bed most nights by 10:00 pm. The Tenants also stated that during the last police visit to their unit, the police had broken their front window to gain access to the unit. The Tenants testified that they covered the cost of having the front window of the rental unit replaced.

The Tenants also testified that there is currently no damage to the rental unit, although there had been a hole in the wall in the bathroom, they had repaired that. They also testified that they had made several upgrades to the unit, installing a new toilet, shelves in the laundry room and dishwasher in the kitchen.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord has not provided sufficient evidence to show that the Tenants have caused extraordinary damage to the property.

I accept the sworn testimony from both the Landlord and the Tenants that the police have attended the rental on more than one occasion due to complaints from the neighbours regarding noise and fighting in the Tenants' unit. I also accept that the police attended the rental unit on February 18, 2018, and forced their way into the rental unit by breaking the front window of the unit.

I accept the written complaints from the neighbours that they have been significantly disturbed by the level of noise coming from the Tenants' unit, and that the repeated police attendance, combined with the level of disturbance caused by the incident on February 18, 2018, has caused them to be concerned for their safety.

This leads me to find that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Therefore, I dismiss the Tenants' application to cancel the Notice issued on February 19, 2018.

I find the Notice issued on February 19, 2018, is valid and enforceable.

Under section 55 of the Act, if the tenant's application is dismissed and the Notice is valid. I am required to grant the landlord an order of possession to the rental unit. Therefore. I am granting the Landlord and order of possession effective not later than 1:00 pm on May 31, 2018.

Since the Tenants were not successful with their application, I find the Tenants are not entitled to recover the filing fee from the Landlord.

Conclusion

The Tenants' Application to cancel the Notice, issued on February 19, 2018, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 pm on May 31, 2018**. Should the Tenants 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: May 09, 2018

Residential Tenancy Branch