



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 the Tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the Notice); and,
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

Both sides were present at the teleconference hearing. The hearing was held on May 16, 2018. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receipt of each other's documentary evidence.

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 are described in this Decision.

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

Both parties provided a substantial amount of testimony during the hearing in relation to multiple different issues with the tenancy. The Landlord stated that there is an issue with

noise, an issue with the Tenants smoking on their balcony, and they also caused a fire and refused to pay for the repairs. However, in this review, I will only address the facts and evidence which underpin my findings and I will only summarize and speak to points which are essential in order to determine whether or not there is cause to end the tenancy. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings. In this case, my findings hinge largely upon noise issues, and they will be the focus of my evidence summary and analysis.

The Tenant acknowledged receiving the Notice on February 26, 2018. This Notice was issued for Cause as follows:

1. Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the 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.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord stated that the occupant below the Tenants has complained numerous times about the noise the Tenants make. The Landlord provided copies of the written complaints from the occupant below the Tenants. The first letter is dated December 17, 2017, was from the occupant below and indicated that for many months there has been constant noise (stomping, thumping, dragging of furniture, and loud music) coming from the rental unit. The occupant below complains that the noise starts as early as 6 am, and the music is loud enough that lyrics of the song can be heard clearly. The occupant stated that sounds sometimes continue until nearly 1 am. The occupants stated that they have had difficulty sleeping because of all the noise.

The Landlord stated that they have had complaints about loud yelling, arguing, and loud music, as well. The Landlord issued a warning letter (provided into evidence) to the Tenants on December 21, 2017, indicating that it is a breach of the tenancy agreement to disturb others with noise and poor conduct. The Landlord indicated that if they continue to receive complaints, then they will issue a notice to end tenancy.

The Landlord pointed to another complaint letter (also in evidence) on January 23, 2018, from the occupants below. This letter stated that there was ongoing “constant” thumping and stomping, starting at approximately 7 am, and it doesn’t stop until 10 pm. The occupant further stated that sometimes the noises continue throughout the night. The Landlord issued a second warning letter, also provided into evidence, on January 23, 2018, warning the Tenants that they need to rectify their “excessive” noise issues or face eviction.

The Landlord issued a 1 Month Notice on February 26, 2018, under the grounds specified above. The Tenant acknowledged getting the 1 Month Notice. Subsequent to the 1 Month Notice being issued, the Landlord issued another breach letter regarding an incident on March 20, 2018, where loud noises were reported at 2 am. The Landlord requested that the Tenant correct the issues by March 22, 2018, or face eviction.

The Landlord stated that, in addition to the written complaints from the unit below, there have been verbal complaints from others in the building regarding the noise from the rental unit.

The Tenants stated that they have lived there for years now and do not feel they are as noisy as the Landlord is alleging. The Tenants stated that they have been given numerous noise complaints but also stated that it is a wood framed building and some noise transfer is normal. The Tenants stated that they have a 2 year old child. The Tenants acknowledge that their child is active but stated that they can only do so much to keep noise down. The Tenants stated that they both work and often have a family member come over during the day to babysit. The Tenants further stated that they feel it is okay to make some noise during the daytime hours and they deny being noisy during the quiet time hours (11 pm to 7am).

The Tenants have provided letters from others in the building (surrounding units) speaking to the fact that they not producing an excessive amount of noise.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy. More specifically, since my findings hinge on

the noise issue, it is not necessary to speak to, resolve and address the other issues with respect to the fire in the rental unit and the smoking on the balcony.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

I turn to the first ground indicated on the Notice:

1. Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The documentary evidence and testimony provided by the Landlord shows that the quiet enjoyment of at least one other occupant is being impacted by the noise created by the Tenants. I acknowledge that the Tenants have provided letters from other people in the building stating that they are not overly noisy. However, I find this does not negate the fact that the noise created by their tenancy has significantly interfered with or unreasonably disturbed at least one other occupant (more specifically the occupants below). The Landlord has received multiple complaints, and letters, detailing the types of noise, and prevalence and intensity of this noise. The occupants below stated that they have had difficulty sleeping from the noise and it has been ongoing for months. It appears that the level of noise goes beyond what is normal and reasonable, even after considering that the building is an older wood framed building.

I find there is sufficient evidence to show that other occupants have been unreasonably disturbed by the Tenants' behaviour and I find the Landlord had sufficient grounds to issue the Notice. I am mindful that the Landlord has provided opportunities for the Tenants to rectify the noise issue by way of written warnings, yet the evidence indicates the noise issues have persisted. The Tenants' application to cancel the Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession.

As the Tenants were not successful with their application, I dismiss their claim to recover the cost of the filing fee.

Further, given my findings thus far, it is not necessary to consider the other grounds on the 1 Month Notice.

Conclusion

The Tenants' application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed. Further, I dismiss the Tenants' request to recover the cost of the filing fee.

The Landlord is granted an order of possession effective **May 31, 2018, at 1pm**. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: May 16, 2018

Residential Tenancy Branch