



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHIRLYN INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

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 May 8, 2018, and to request the return of their filing fee.

Both the Landlord, the Property Manager, the Tenants, and their Advocates attended the hearing and were each affirmed to be truthful in their testimony. All parties were 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.

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.

Issues to be Decided

- Should the Notice issued on May 8, 2018, be cancelled?
- If not, 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 on May 1, 1998, 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 \$1,086.00 plus \$15.00 for parking is to be paid by the first day of each month, and the Tenants paid the Landlord a \$432.50 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that he issued the Notice on May 8, 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

The Notice states the Tenants must move out of the rental unit by June 30, 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 May 16, 2018.

LANDLORDS EVIDENCE

The Landlord testified that the Notice was issued in response to the events of May 5, 2018. The Landlord testified that three police cars had responded to the rental unit of the Tenants due to complaints received from several neighbours that evening. The complaints were that the Tenant W.W. was on the balcony of his rental unit; yelling, swearing, and threatening the Occupant of the unit above him (the Occupant). The Landlord provided an audio recording of the Tenant W.W, which had been made that night, into documentary evidence.

The Landlord testified that the Occupant feels threatened and unsafe in the building due to this incident. The Landlord testified that two days before this incident, on May 3, 2018, the Tenant W.W. and the Occupant had an exchange of words in a common area of the building regarding pigeons that had been nesting on the building.

The Landlord testified that the audio recording would show how aggressive and out of control the Tenant W.W. was the night of May 5, 2018. The Landlord testified that the

Tenant W.W. was verbally threatening the Occupant and that the Occupant is now fearful of living in the same building at the Tenant W.W.

The Landlord testified that he as also provided three letters of complaint regarding the Tenant W.W. The first is from the person who made the audio recording of the Tenant W.W. the evening of May 5, 2018. In that letter, the person states that they were very disturbed by the Tenant W.W. actions that night and that she remains “scared of this person” and wishes to remain anonymous. The second letter of complaint is from a neighbour living on the same floor as the Tenants; the complaint states that recently the Tenants had become so angry with her “home workers” that their actions had scared some of her home workers away.

The third letter of complaint is from the Occupant who states that she feels very threatened and afraid of the Tenant W.W. The Occupant’s letter offers her account of the interactions between herself and the Tenant W.W. as well as a denial of the claims the Tenant W.W. has made against her. Additionally, the letter states that she remains worried, upset, terrified and uncomfortable in her own home due to the Tenant W.W. actions.

The Landlord testified that they are requesting an order of possession, if the Tenants are unsuccessful in cancelling the Notice. However, the Landlord stated that they are agreeable to give the Tenants more time to find somewhere else to live, stating that they would extend the move out date to August 31, 2018.

TENANTS EVIDENCE

The Tenant W.W. testified that the Occupant had told him, on May 3, 2018, that she did not like the pigeons that had been nesting on the building and that she had poisoned them. The Tenant W.W. stated that he had become very upset at hearing this and called the police to report what the Occupant had done.

The Tenant W.W. testified that he found a dead pigeon on his balcony the next day, which he believed confirmed that the Occupant had in fact poisoned the pigeons. The Tenant W.W. testified that he remained very upset about hearing the pigeons had been poisoned and was very angry at the Occupant.

The Tenant W.W. also testified that on the evening of May 5, 2018, he was still very upset and that he consumed several beers that evening. The Tenant W.W. testified that his memory of the evening was that he remained in his bedroom all night and that he has no memory of going on the balcony and yelling. The Tenant W.W. testified that he is on medication due to an illness and that the combination of the alcohol and medication may have adversely affected him. When questioned by this Arbitrator, “Did

you listen to the audio recording of that evening, that has been submitted into evidence?" the Tenant W.W. responded "Yes." This Arbitrator then questioned, "Is that your voice on that recording?" The Tenant W.W. answered "Yes."

The Tenant J.O. testified that Tenant W.W. is an animal lover who had become very distraught to hear that the birds had been poisoned. The Tenant J.O. testified that she believes that the Tenant W.W. had been "goaded into his outburst by the Occupant. The Tenant J.O. testified that the Tenant W.W. was very remorseful about what had happened, and had asked her to remove all the remaining alcohol from their home the next day.

The Tenants' advocates offered several written personal references for the Tenants and supplied the sworn testimony of the one witness who testified that she had been a neighbour of the Tenants for a while, and that she had been home the evening of May 5, 2018. The witness testified that the Tenants had come to her and apologized for what had happened on May 5, 2018, and that she believed this had been a one-off, that she was not personally afraid of the Tenants and that she believes that the Tenants should be allowed to remain in the building.

Analysis

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

I accept the sworn testimony from both parties that the police attended the rental unit on May 5, 2018, due to complaints from neighbours regarding the Tenant W.W. yelling from his balcony. I also accept that the police removed the Tenant W.W. from the rental unit on the evening of May 5, 2018.

I accept the three written complaints from the neighbours living in the rental building, that they have been significantly disturbed by the actions of the Tenant W.W. on May 5, 2018. I also accept that these three complainants are afraid of the Tenant W.W, and that the police attendance, combined with the level of disturbance caused by the incident on May 5, 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 May 8, 2018.

I find the Notice issued on May 8, 2018, is valid and enforceable.

Under section 55 of the Act, if the Tenants' 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 an order of possession effective not later than 1:00 pm on August 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 May 8, 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 August 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: July 11, 2018

Residential Tenancy Branch