



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that tenant V.B. personally served the landlord with the notice of dispute resolution package on June 1, 2018. I find that the landlord was served with this package on June 1, 2018, in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

At the beginning of this hearing tenant V.B. informed me that her full legal name was not on the application for dispute resolution. Pursuant to section 64 of the *Act*, I amended this application to reflect tenant V.B.'s full legal name.

Issue(s) to be Decided

1. Are the tenants entitled to cancellation of the One Month, pursuant to section 47 of the *Act*?
2. If the tenants' application is dismissed or the landlord's One Month Notice is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2009 and is currently ongoing. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties but a copy was not submitted for this application.

The landlord testified that on May 28, 2018 she left the One Month Notice with an effective date of June 30, 2018, in the tenants' mailbox. Tenant V.B. testified that she received the One Month Notice on May 29, 2018.

The One Month Notice stated the following reasons for ending the tenancy:

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

The landlord testified that for the past year she has received numerous complaints from many different tenants about the conduct of tenant A.B. The landlord testified that the complaints are all regarding tenant A.B.'s threatening language which she described as a verbal assault. The landlord testified that she has sent tenant A.B. three or four warning letters about his conduct and the profanities tenant A.B. has yelled at other tenants. The landlord testified that she could not remember all of the complaints she has received but that her witnesses could provide more specific details.

Witnesses K.L. and R.R. (the "witnesses") testified that they live together and are the tenants' next-door neighbors. The witnesses testified that and have borne the brunt of tenant A.B.'s abusive language, which has ranged from obscenities to threats of

physical violence and that these instances are more likely to occur when tenant A.B. is drinking alcohol.

The witnesses testified that with the exception of the past three to four weeks, which have been quiet and for which no disturbances have been reported, every time they come or go from their residence tenant A.B. will yell and curse at them if he sees them.

The witnesses testified that every time they have their kitchen window open, tenant A.B. will curse and yell at them through the window to stop eavesdropping on them. The witnesses said this happened for the entire summer of 2017 when they were opening their windows to let some air in. The witnesses testified that on a number of occasions, dates for which were provided, tenant A.B. threatened to physically assault the witnesses. The witnesses testified that they fear tenant A.B. will assault them.

At the beginning of the hearing only tenant V.B. was on the telephone line, when asked to respond to the accusations levied by the witnesses regarding threats and verbal arguments, she testified that she and tenant A.B. never instigated the arguments and only responded when the witnesses yelled at them through the window. Tenant V.B. testified that she and tenant A.B. were the ones who were getting heckled and yelled at when they came and went from their home, not the other way around.

Later in the hearing tenant A.B. got on the telephone line, was sworn in and provided testimony. Tenant A.B. testified that he never yells or curses at the witnesses and has never threatened to physically injure them. Tenant A.B. also testified that he has never gotten in a verbal altercation with either of the witnesses and doesn't know why he was issued a One Month Notice.

The witnesses testified that tenant A.B. did not like the sound of their air conditioner, which was placed in a window facing the tenants' property. The witnesses testified that tenant A.B. told them that if he had to listen to their air conditioner, the witnesses would have to listen to his lawn mower. The witnesses testified that the tenant then left his lawn mower running unattended underneath their kitchen window for approximately 1.5 hours. The witnesses testified that this occurred on three of four occasions for periods ranging from 30 minutes to 1.5 hours, one of which was in the middle of winter.

Tenant A.B. testified that he fixes small engines including lawn mower engines and that sometimes he has to run them to make sure they are working properly but that he never left them under the witnesses' window or intended to bother them. Tenant A.B. testified

that once in the winter he was given a lawn mower and he was testing it but did not do so directly under the witnesses' window.

Analysis

Based on the testimony of both parties, I find that the One Month Notice was served on the tenants on May 29, 2018, in accordance with section 88 of the *Act*.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, tenant A.B. and tenant V.B. provided conflicting testimony amongst themselves regarding the verbal threats and the yelling of profanities, which also differed from the testimony on the witnesses. Tenant V.B. testified that she and tenant A.B. only yelled back at the witnesses when the witnesses initiated a verbal altercation. Tenant A.B. testified that no verbal altercations ever occurred. I find that tenant A.B.'s complete denial of any verbal altercations altogether is not in harmony with the preponderance of the probabilities which a practical and informed person would recognize as reasonable. I therefore accept the witnesses' version of events over the conflicting testimony of the tenants.

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if 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. I find that the actions of the tenants, including verbal threats, derogatory comments and lawn mower noise pollution, have significantly interfered with or unreasonably disturbed the witnesses.

I find that the landlord properly issued the tenants the One Month Notice and that the One Month Notice conforms with the form and content requirements of section 52 of the *Act*. The landlord's One Month Notice is upheld. The tenants' application is dismissed.

Since I have found that the tenants' breached section 47(1)(d)(i) and I have dismissed the tenants' application, I decline to consider the other reason to end the tenancy set out in the One Month Notice.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. 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 24, 2018

Residential Tenancy Branch