



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO ABORIGINAL CENTRE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 27, 2018 ("1 Month Notice"), pursuant to section 47.

The landlord's agent ("landlord") and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 116 minutes.

The landlord confirmed that he was the housing manager and that he had permission to speak on behalf of the landlord company named in this application, as an agent at this hearing. Three witnesses, "landlord witness RJ," "landlord witness DM" and "landlord witness AM," testified on behalf of the landlord. Two witnesses, "tenant witness MS" and "tenant witness DR" testified on behalf of the tenants at this hearing. Both parties had equal opportunities to question all witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

The tenants confirmed receipt of the landlord's 1 Month Notice on July 27, 2018. The notice indicates an effective move-out date of September 1, 2018. In accordance with

sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 1 Month Notice on July 27, 2018. A copy of the notice was provided for this hearing.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2017. Monthly rent in the current amount of \$800.00 is payable on the first day of each month. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

Both parties agreed that the landlord issued the 1 Month Notice for the following reasons:

- *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 he has no proof of illegal activity by the tenants, including any criminal charges or convictions.

The landlord stated that there have been two incidents, in particular, demonstrating the tenants' significant interference and unreasonable disturbance at the rental property, but that it has been a pattern over a number of months. He said that the two incidents involved mainly the female tenant, and other occupants including young children at the

rental property. He explained that the female tenant yells, uses racial slurs and profanity, and threatens to call the police on young children at the rental property. He said that both tenants also argue loudly in public at the rental property and others can hear them using profanity and racial slurs, which are particularly inappropriate around young children. He claimed that the landlord has received complaints from these other occupants and he provided the tenants with a warning letter on June 26, 2018, outlining the landlord's rules at the rental property, asking the tenants not to use racial language, swear or yell, and referenced the tenancy agreement.

The landlord said that on June 15, 2018, the female tenant used hostile words, profanity and racial slurs against another tenant's mother, landlord witness RJ, at the rental property. He provided a letter from this witness. Landlord witness RJ testified that she wrote the letter and that the female tenant used profanity and racial slurs against her in front of her grandchildren on the above date. She said that she was trying to stop a young boy from running over her granddaughter at the rental property, when the female tenant got involved to defend the boy. She said that she exchanged some words with the female tenant and then left with her grandchildren. She confirmed that her daughter is a tenant at the rental property and landlord witness RJ was watching her children that day. Landlord witness AM confirmed the above details, stating that she witnessed this incident as well. The female tenant admitted using profanity but denied using racial slurs, saying that she was defending the boy, who is her best friend's son and calls her "aunty," and that she told landlord witness RJ to leave because she did not live at the rental property.

The landlord testified that another incident occurred on July 22, 2018, when the two tenants were having an argument outside their rental unit in public at the rental property. He said that they could be heard swearing and using profanity. He claimed that although the female tenant says that she is a loud person and she cannot control that, she still uses inappropriate language and she should be able to control that. The male tenant stated that he was at work for six hours that day until 10:00 p.m. doing a cash job so he was not present at the rental property to be fighting with the female tenant all day. He said that on the above date in question, the same boy in the June 15, 2018 incident was involved, who he considers his nephew, and he was being jumped and bullied by five boys and there were no adults around. He claimed that he threatened to call the police because of this behaviour because he could not just stand by and let it happen.

The landlord provided two letters from landlord witness DM and landlord witness AM regarding the July 22, 2018 incident. Both witnesses confirmed writing these letters and confirmed living as tenants at the rental property. Landlord witness DM stated that she

witnessed both tenants arguing, yelling and swearing and that there were lots of children in the yard playing who could hear this. She said that the female tenant yelled at landlord witness DM's son to stay out of the yard, using profanity and racial slurs against him, and that she had to walk him home because he was scared to walk home alone.

Landlord witness AM testified that on July 22, 2018, she heard the female tenant yelling and she does not know whether the male tenant was present. She claimed that the female tenant was using profanity and racial slurs and that she threatened landlord witness AM's daughter to stay off the yard or she would get hurt. When questioned by the female tenant at the hearing, landlord witness AM testified that she did not confront the female tenant about this threat or her behaviour because things had been volatile with the female tenant all summer, there had been lots of arguing and shouting, and she did not see a point in saying anything and making the situation worse. The female tenant denied threatening children and using racial slurs against anyone.

Landlord witness DM testified that she also witnessed another incident on May 29 or 30, 2018, whereby she was in the shower, she heard someone yelling, and when she came outside she saw the female tenant leave her back patio. She said that her children told her that the female tenant yelled and used profanity towards them, that she witnessed the female tenant using profanity against her son so she told her to stop and not talk to her children. The female tenant denied being at the back patio and said she was not on the property but near the back door, and she did not use profanity against landlord witness DM's son. Landlord witness DR testified that she heard landlord witness DM tell the female tenant not to go in her house but she said the female tenant was not on her property but was near the patio on the sidewalk.

Tenant witness MS testified that she wrote a letter and it was provided by the tenants for this hearing. She claimed that she uses racial slurs towards her own children on a daily basis as a joke. She said that she thinks other occupants at the rental property have heard her and think it is the female tenant using these racial slurs. She said that the female tenant does not use racial slurs against anyone and that she is over at the tenants' rental unit every day helping with their children. She said that she did not witness the June 15, 2018 or July 22, 2018 incidents, when questioned by the landlord.

Tenant witness DR testified that she wrote a letter and it was provided by the tenants for this hearing. She said that she has not heard the tenants making any racial comments towards anyone. She said that the female tenant only gets involved when she sees children beating up on each other so she splits them up. She said that the female

tenant is a loud person and she has heard both tenants argue a lot in June and July 2018, when the male tenant was not working, and they used inappropriate language towards each other. She said that the arguing is less now that the male tenant is back to work. She said that she did not witness the June 15, 2018 or July 22, 2018 incidents, when questioned by the landlord.

Analysis

Credibility

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimony and their demeanour at the hearing. Considered in its totality, I found the landlord to be a more credible witness than the two tenants. I found the landlord to be forthright, providing his evidence in a calm and straightforward manner. The landlord provided consistent and logical testimony which was supported with documentary evidence as well as witness testimony.

I found that the tenants provided inconsistent testimony during the hearing. They were both argumentative during the hearing. They fought with each other during the hearing, yelled at me repeatedly, and interrupted each other, the landlord and the landlord's three witnesses. When I asked them relevant questions about their tenancy, they became upset and agitated, often refusing to answer my questions and instead yelling and arguing about why I was asking the questions. When given the opportunity to cross-examine the landlord's three witnesses, the female tenant chose to ask irrelevant personal questions rather than substantive questions and often interrupted the witnesses when she did not like the answers, not allowing them to finish their responses.

1 Month Notice

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants received the 1 Month Notice on July 27, 2018, and filed this application to dispute it on August 1, 2018. Therefore, they are within the time limit under the *Act*. Where tenants apply to dispute a notice within the timeline, the burden shifts to the landlord to prove the reasons on the notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the tenants significantly interfered with and unreasonably disturbed the other occupants at the rental property. Since I have found one of the reasons on the notice to be valid, I do not need to examine the other reason.

I accept the testimony of the landlord and the landlord's three witnesses that the female tenant's consistent pattern of yelling, using profanity and racial slurs towards other occupants and their young children at the rental property, caused significant interference and unreasonable disturbance for these occupants.

On June 15, 2018, the tenant yelled profanity and racial slurs at the mother of one of the tenants at the rental property; landlord witness RJ testified at this hearing about this experience and how it occurred in front of her young grandchildren. Landlord witness AM testified that she witnessed the June 15, 2018 incident and she confirmed landlord witness RJ's account of events.

Landlord witness AM wrote a letter and testified about witnessing the July 22, 2018 incident, where she heard the female tenant yelling profanity and racial slurs in public at the rental property, as well as threatening landlord witness AM's daughter. Landlord witness DM wrote a letter and testified about how she witnessed the July 22, 2018 incident and she heard the female tenant yelling profanity and racial slurs at young children in the yard at the rental property, including her son and how she had to walk him home because he was scared. She also noted another incident in late May 2018 when the female tenant yelled and used profanity towards her children and she asked her to stop.

Both of the tenants' witnesses agreed that the female tenant is a loud person at the rental property. Tenant witness DR agreed that she has heard the two tenants fighting a lot and loudly at the rental property. The tenants' two witnesses were not present during the two incidents on June 15, 2018 or July 22, 2018.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I dismiss the tenants' application. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. Accordingly, I find that this tenancy ends at 1:00 p.m. on September 30, 2018, as the landlord confirmed during the hearing that the tenants paid rent for September 2018 to the landlord, so I find that they are entitled to possession of the unit for the entire month. Therefore, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on September 30, 2018, pursuant to section 55 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an **Order of Possession to the landlord effective at 1:00 p.m. on September 30, 2018**. 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: September 21, 2018

Residential Tenancy Branch