



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

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") under section 47 of the *Act*;
- Reimbursement of the filing fee under section 72 of the *Act*.

The tenant TO is the father of the tenant PO ("the tenants"). The tenants appeared. The landlord appeared through its agent, JC ("the landlord"). Both parties were given a full opportunity to call witnesses, present affirmed evidence, make submissions and cross examine the other party.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised. The tenants acknowledged receipt of the landlord's materials. Accordingly, I find the landlord was duly served pursuant to section 89 of the *Act*.

An Amendment to the tenants' application was filed on August 10, 2018 to change the unit's address. The landlord confirmed the address on the cover page of this decision is correct.

I note that section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a One Month Notice 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 One Month Notice in compliance with the *Act*.

At the outset, the tenant PO complained about the landlord's intentions to call witnesses. The tenant PO stated she did not understand witnesses could be called at the hearing, and that she had "lots of witnesses" to call if only she had known this was permitted.

I asked the tenant PO if she wanted an adjournment and she replied negatively.

During the hearing, the tenant PO testified she has a brain injury, a neurological condition, various severe physical conditions, and epilepsy with grand mal seizures.

Throughout the hearing, I asked the tenant PO multiple times if she had an advocate, or a person who could help her during the hearing. While the tenant PO's father, was present during the hearing, he did not participate.

The tenant PO replied she had considerable support from doctors, neurosurgeons and an organization dedicated to assisting persons with brain injury. However, she denied needing or wanting anyone to assist her at the hearing.

I cautioned the tenant PO three times to stop talking to and to interrupting the landlord. After the landlord's witnesses gave testimony, the tenant PO complained about not having enough time to speak. Accordingly, I allowed the tenant to speak uninterrupted for eleven minutes. The tenant described how the landlords were doing everything they could to get her to leave, such as lying about the sound coming from her apartment, accusing her of breaking in to their unit, and falsely alleging she drank and used alcohol on an almost daily basis. I also asked her shortly before the close of the 65-minute hearing if there was anything final she wished to say. She summarized her claim before the arbitration concluded.

Issue(s) to be Decided

- Are the tenants entitled to a cancellation of the One Month Notice under Section 47 of the *Act*;
- Are the tenants entitled to reimbursement of the filing fee under section 72;
- If the tenants are not successful in cancelling the One Month Notice, is the landlord entitled to an order of possession under section 55 of the *Act*.

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective oral and documentary submissions are reproduced here.

The landlord testified the tenancy started on March 1, 2018 and is ongoing. Rent is \$1,050.00 payable on the first of the month. The landlord testified the tenant TO did not

move in to the unit and lives out of the country most of the time. As mentioned earlier, the tenant TO attended the hearing but did not participate except to confirm that he lives in Mexico much of the time; he was uncertain of the dates when he is in Canada.

The tenants provided a security deposit in the amount of \$525.00 which is held by the landlord.

The landlord stated the tenant PO lives in the downstairs unit of a home in which the upstairs unit is occupied by Mr. and Mrs. V. The units share a laundry room.

The landlord testified the tenant TO was served with the One Month Notice on July 31, 2018. The tenants acknowledge receipt. I find the tenants were served with the One Month Notice on July 31, 2018 under section 88.

A copy of the One Month Notice was submitted in evidence which contains an effective vacancy date of August 31, 2018.

In the One Month Notice, the landlord selected the following as reasons for issuance of the One Month Notice (numbering added):

1. The 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.
2. Tenant or a person permitted on this property by the tenant had caused extraordinary damage to the unit/site or property/park

As mentioned earlier, during the hearing, the tenant PO testified she has a brain injury, a neurological condition, physical ailments, and epilepsy characterized by grand mal seizures. No medical reports were submitted.

The landlord testified she was aware in a general way of the tenant PO's medical condition and rented the unit to the tenants on the understanding that PO's father, tenant TO, would be living with her as a caregiver.

The landlord testified that Mr. and Mrs. V, the occupants of the upstairs unit, started verbally complaining about the tenant PO shortly after the tenant PO moved in.

The landlord testified the tenant TO was occasionally in the geographical area in which the unit is located and when this would happen the landlord would meet with him almost every day to convey the complaints against the tenant PO by the upstairs occupants and to ask him to remedy the situation. The landlord stated the tenant TO was elderly and unable to offer a solution.

The landlord stated she issued the One Month Notice after she received an email dated July 31, 2018 from Mr. and Mrs. V, the occupants of the upstairs unit. The email, a copy of which was submitted in evidence, stated in part as follows:

She [tenant PO] is constantly bothering us. Sometimes she can come up 10 times a day and even calling us at work.

Every time we are outside we cant be quiet she always comes to see us and complain about something that its not our business

She is complaining about the bills and say we should pay more because we have a t.v.

*I can never do my laundry because she always has something in the washer
One day a breaker went off and she wouldn't let us in the laundry room to turn it back on*

One night she called us 3 times during the night at 12 am and 2 am just to wake us up and then hanging up

They took tools in the garage without asking us first

She is always drunk or on drugs and I'm scared one day she will do something crazy

My daughter ask her politely to stop bothering us all the times and it lasted 2 days and she started again and its only getting worst.

(as written)

Mr. and Mrs. V, were called by the landlord to give affirmed evidence. Their testimony was translated by their daughter CL. They testified they are a couple in their mid-fifties who live in the house above the rental unit. They stated as follows:

- Beginning shortly after she moved in, the tenant PO came unannounced to their unit multiple times a day for a variety of reasons, such as to borrow items;
- They stated the tenant PO would store dirty laundry in the washer and fail to remove her laundry from the dryer, while putting their laundry on the floor;
- They stated they both rise at 6: 30 AM to go to work; the tenant PO and her male friend would sometimes 'party' all night, yelling and arguing, disturbing their sleep;
- They believed the tenant PO was frequently under the influence of drugs or alcohol;
- The tenant PO sometimes asked Mr. and Mrs. V. "not to let [male friend] in if he came";
- They stated the tenant would sometimes call them at work over insignificant things, such as whether her television was working properly, or to report that her key was stuck in the door;
- They testified the tenant "took something to the top of the dryer", beating it until it was severely dented;
- They said the tenant PO had a grand mal seizure outside the house resulting in severe injuries to the tenant's head;
- They suspected the tenant PO broke into their unit and smashed a window to get access to her own unit after misplacing her key.

The tenants denied all allegations of the landlord and the witnesses. The tenant PO was vociferous in blaming all problems on Mr. and Mrs. V. She stated that Mr. and Mrs. V, along with their daughter, developed a 'vendetta' against her when she moved in, that they smoke marijuana and drink, and "lie about everything." The tenant PO reported many complaints about Mr. and Mrs. V, such as their parking of a recreational vehicle and the way they use the laundry.

The tenant submitted as evidence an undated letter which states the landlord's claims are false:

"This can be proven that not only the ridiculous and abusive behaviour from tenants upstairs by several witnesses and physically not possible. I have been in hospital for a total of eight weeks due to seizures and a brain injury during the last three months." [as written]

In the letter, the tenant denies all the allegations of Mr. and Mrs. V. She states she has “severe spinal cord and brain injury” and could not physically do the things complained of by the landlord’s witnesses.

The tenant PO complained about Mr. and Mrs. V’s activities which have disturbed and upset her, such as their installation of a swing and air conditioner. She claims she rolled over in her sleep and made “pocket calls” to Mr. and Mrs. V without any intention of disturbing anyone. She accuses Mr. and Mrs. V of “yelling and screaming” and “slamming of doors and pounding on the floor starting at 6:30 AM every day” which she views as “harassment”.

Analysis

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.

I find the One Month Notice complies with section 52 of the *Act*.

Section 47 of the *Act* provides that upon receipt of the One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

As discussed earlier, I find the tenant was served with the One Month Notice on July 31, 2018 and the tenant filed an Application for Dispute Resolution August 3, 2018, within the ten-day period under the *Act*.

While the landlord alleged multiple grounds for the issuance of the One Month Notice, during the hearing, the landlord submitted evidence respect to one ground only, namely:

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

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that the tenants have significantly interfered with or unreasonably disturbed another occupant (that is, the occupants of the upstairs unit).

The landlord gave testimony of repeated verbal warnings to the tenant TO about the complaints of the occupants in the upstairs unit, Mr. and Mrs. V. These warnings had no effect on the behavior of the tenant PO.

The letter of July 31, 2018 Mr. and Mrs. V. was submitted as evidence providing clear and believable details of the tenant's actions. These complaints were repeated by the witnesses in their affirmed testimony. I accept the witnesses evidence of the actions of the tenant PO which together amount to significance interference with the upstairs tenants, Mr. and Mrs. V.

Considering the documentary and oral evidence, I find the landlord has established on a balance of probabilities that the tenants have significantly interfered with and unreasonably disturbed the other occupants in the building, Mr. and Mrs. V.

I therefore dismiss the tenants' application including the request for reimbursement of the filing fee.

Pursuant to section 55(1), the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenants' application is dismissed.

I therefore grant the landlord an order of possession which is effective two days after service on the tenant.

Conclusion

The tenants' claims are dismissed without leave to reapply.

I grant the landlord an order of possession which is effective two days after service on the tenants.

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 to 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: September 28, 2018

Residential Tenancy Branch