



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

On August 29, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a One-Month Notice to End Tenancy for Cause, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

Preliminary Matter

In accordance with Section 64(3) of the Act and in agreement with the Tenants, I have amended the Tenants’ Application by changing the Landlord’s name from the Residential Manager to the actual Landlord of the rental unit.

Issues to be Decided

Should the One-Month Notice to End Tenancy for Cause, dated August 28, 2018 (the “Notice”), be cancelled, in accordance with Section 47 of the Act?

Should the Tenants be compensated for the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenants agreed on the following terms of the tenancy:

The fixed term tenancy began on October 7, 2016 and continued on as a month-to-month tenancy after six months. The monthly rent is currently \$855.52. The Tenants paid a \$250.00 security deposit and a \$200.00 pet damage deposit.

Landlord's Evidence:

The Landlord testified that he served the Notice to the Tenants by posting it on their door on August 28, 2018. The Notice had a move-out date of September 30, 2018 and the Landlord stated that the reasons for the Notice were that the Tenants had unreasonably disturbed another occupant of the residential property and that the Tenants had breached 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 there have been ongoing noise complaints over the last two years that have necessitated several warning letters to the Tenants. The Landlord said that the complaints were mostly from other tenants in the residential property regarding excessive noise related to playing loud music and yelling during domestic altercations. The Landlord stated that the RCMP have been called on several occasions to the Tenants' rental unit.

The Landlord submitted evidence that began with documentation of a January 5, 2017 event where the police were called to the rental unit in relation to a woman who had been screaming. As a result of this incident, the Landlord provided a Warning Notice, dated January 10, 2017, to the Tenants that referred to Clause #18 in their Tenancy Agreement and cautioned the Tenants not to disturb, harass or annoy other occupants of the building.

The Landlord provided copies of written complaints about the Tenants' loud music and shouting in both April and July 2017 and also a copy of a second Warning Notice, dated July 18, 2017, that warned that further breaches of Clause 18 of the Tenancy Agreement could result in a One-Month Notice to End Tenancy.

After a complaint of very loud music in January 2018 and ongoing complaints of domestic arguments that included screaming in July 2018, the Landlord served a final warning notice, dated July 11, 2018, to the Tenants. The Landlord stated that when he

attended to serve the warning notice to the Tenants, the music was playing so loud that the Tenants could not hear him knocking on the door and he had to attach it to the door.

The Landlord received further complaints about the Tenants arguing and screaming on July 21, 2018 and furthermore, on August 6, 2018 when the police were called to attend the rental unit. This continued on several more occasions and as a result, the Landlord issued the Notice to End Tenancy on August 28, 2018.

The Landlord stated that he has tried to work with the Tenants over the years; however, the problems keep continuing. He is requesting an Order of Possession for the rental unit.

Tenants' Evidence:

The Tenants acknowledged that they received the Notice on August 28, 2018.

Tenant DK stated that some of the complaints the Landlord was talking about were from two years ago and that the January 2017 incident involved her sister, not specifically the Tenants.

The Tenant testified that she had made complaints about some of the tenants and their loud televisions in July of 2018 and feels that those tenants were now complaining about her (the Tenants) in retaliation.

Tenant DK stated that there has been some yelling as she is a very loud person and has been getting upset lately because she has been under a lot of stress. Her partner, the other Tenant, is a musician and she admitted that sometimes the music gets loud, but that they have been attempting to lower the thumping of the bass. The Tenant stated that they are not intentionally disturbing the other tenants and that they have left notes for the neighbours to encourage them to contact them (the Tenants) if they are too loud.

The Tenants submitted a letter from a neighbour that indicated that over the last six months, they have not been disturbed by the Tenants.

Analysis

The Landlord testified that he served a One-Month Notice to End Tenancy for Cause on August 28, 2018, by posting it to the Tenants' door. The move-out date on the Notice

stated September 30, 2018. The reasons stated on Page 2 of the Notice indicated that it was served as the Tenants had significantly interfered with or unreasonably disturbed another occupant and breached a material term of the Tenancy Agreement. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the Notice are valid and that the Notice complies with Section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I accept the Landlord's testimony and evidence that the Tenants have, since January 2017, had many instances where they have breached Clause #18 of their Tenancy Agreement by disturbing other occupants in the residential property by yelling and arguing and also causing loud music to disturb the peaceful enjoyment of the other tenants. The Landlord has provided evidence to show that on three different dates, a written warning was provided to the Tenants to abide by Clause #18 of their Tenancy Agreement. As a result, I find that the Landlord has provided sufficient evidence to prove that the Tenants have breached a material term of their Tenancy Agreement that was not corrected within a reasonable time after written notice to do so.

Although the individual disturbances aren't specifically "significant", I find that the Tenants have also unreasonably disturbed other occupants, contrary to Section 47(1)(d) of the Act, as the disturbances have been occurring fairly regularly over a long period of time. As a result of the breaches of a material term and the unreasonable disturbances, I find that the reasons that the Landlord has issued the Notice to the Tenants are valid and that the Notice complies with Section 52 of the Act. Accordingly, I grant the Landlord an Order of Possession, in accordance with Section 55 of the Act.

I expect that the Tenants have paid for the use and occupancy of their rental unit for October 2018; therefore, I grant an Order of Possession to the Landlord for October 31, 2018.

As the Tenants were unsuccessful with their claim to cancel the Notice, I find that they should not be compensated for the filing fee.

Conclusion

The Tenants were unsuccessful in their Application to cancel the Notice, dated August 28, 2018. I dismiss the Tenants' Application without leave to reapply.

Pursuant to Section 55 of the Act, I am granting the Landlord an Order of Possession to be effective on October 31, 2018 at 1:00 p.m. This Order should be served on the Tenants as soon as possible. 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: October 17, 2018

Residential Tenancy Branch