



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 landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

Both parties attended the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The landlord acknowledged receipt of the Notice of Hearing and the Application for Dispute Resolution. I find the landlord was served under section 89 of the Act.

Both parties were informed of Section 55 of the Act which requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause 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 in compliance with the Act.

Preliminary Matter: Res Judicata

The tenants argued that this matter has already been adjudicated in a previous Residential Tenancy Branch (RTB) hearing. The hearing number is quoted on the cover sheet of this decision. Specifically, the tenants argued that they disputed a previous One Month Notice to End Tenancy for Cause issued by the same landlord and relating to the same issues as stated in the current One Month Notice. The RTB records for the previous case indicate that the hearing was held on August 30, 2018 and the tenants' application to cancel the notice was granted. This raises the issue of res judicata.

Res judicata is a rule in law that a final decision, determined by an adjudicator with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent application involving the same claim.

The previous application for dispute resolution raised each of the allegations which the landlord has again asserted in the current One Month Notice. Specifically, in the previous application, the landlord issued a notice to end tenancy on the basis that the tenants were not paying their rent timely and the tenants were disturbing other occupants in the building. In this matter, the landlord is making the same allegations with the same facts against the same tenants.

I find that the previous matter is related to the same parties and the same issues and a final decision was issued by the previous arbitrator on the merits of the claim. Accordingly, I find that res judicata does apply and I shall exclude all allegations and evidence which relate to the previous RTB claim. I shall only

consider allegations and evidence arising after the date that the previous one month notice to end tenancy was issued by the landlord, being June 30, 2018.

Issue(s) to be Decided

Are the tenants entitled to order for cancellation of the landlord's One Month pursuant to section 47?

If not, is the landlord entitled to an order for possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The landlord testified that the tenants have been residing in the basement suite of the property since April 2018. The landlord testified that the tenants have a fixed term tenancy with a rent of \$1,200.00 per month, payable on the last day of the prior month. The landlords testified that the tenants provided a \$600.00 security deposit and no pet damage deposit. Neither party provided a copy of the tenancy agreement.

The tenants testified that they thought that the rent was payable on the first day of the month, not the last day of the prior month. The tenant testified that the landlord told them that the rent was paid on the last day several months into the tenancy.

The rental unit is a basement suite and the landlord has another rental unit above the tenant's suite in the same building.

During this hearing, the landlord testified that a dispute arose between the former upstairs tenant, JP. The landlord testified that JP subsequently left the property in July 2018 as a result of the ongoing issues between the tenants.

The tenants testified that the landlord issued a One Month Notice to End Tenancy last summer and an RTB hearing was heard on August 30, 2018. Documents from the previous application for dispute resolution indicate that the landlord issued a notice to end tenancy on that basis that the tenants were not paying their rent timely and the tenants were disturbing other occupants in the building. In the previous matter, the arbitrator ruled in favour of the tenants and the notice to end occupancy was cancelled. The records in the previous dispute resolution case indicates that the previous notice to end tenancy was issued on June 30, 2018.

The landlord testified that a new tenant, JR, moved into the upstairs unit in August 2018. The landlord testified that JR also complained about the tenants. The landlord testified that JR complained that the tenants were very loud and frequently screaming, fighting and cursing. The landlord provided multiple written complaints he received from JR regarding the tenants frequently screaming and fighting. The landlord submitted an email from JR which stated that:

...the tenants have nasty arguments almost every day and all nights sometimes where they scream and slam the doors and is *[sic]* impossible to sleep and live here with this situation *[sic]* not enough they smoke all night inside and the smoke comes to the rooms at night and the house always smells weird.

The landlord also testified that JR complained that one of the tenants' guests was parking their vehicle in JR's parking space.

The landlord testified that previous tenant JP filed an application for dispute resolution for compensation of reduced rent because of her loss of quiet enjoyment from the tenants' conduct. An RTB hearing was conducted on November 2, 2018 and the landlord was ordered to compensate JP \$550.00 for JP's loss of quiet enjoyment as a result of the tenants' conduct.

The landlord testified that JR has now also vacated the property because he has disturbed by the tenants. The landlord also testified that the JR has also initiated an application for dispute resolution against the landlord for compensation for loss of quiet enjoyment as a result of the tenants' conduct.

The tenants denied disturbing the other residents in the building. The tenants testified that they do not scream and fight, Rather, they testified that one of the tenants in this dispute has a serious medical condition and she frequently cries out at night in pain. The tenants also testified that they no longer smoke inside the rental unit.

The tenants further testified that the vehicle blocking JR's parking spot was promptly moved when they became aware of the issue.

The landlord testified that the tenants have always paid their rent several days late every month. The tenants denied this.

The tenants testified that they texted the landlord at the end of each month to let him know that the rent was available for the landlord to pickup. The tenants stated that they always paid their rent in cash and the landlord never gave tenants receipts for the rent cheques. The tenants testified that they made their own rent receipts and had the landlord, or the landlord's family member, sign the receipt when the tenants made the rent payments. The tenants produced copies of rent receipts showing the payment of rent on the first day of each month going back to March 2018.

The landlord admitted that he did not give the tenants receipts for their cash rent payments. However, the landlord disputed the tenants' receipts. The landlord denied signing the tenant's receipts and the landlord said the receipts were not accurate. The landlord testified that the tenant actually paid rent much later each month than the dates stated on the tenant's receipts.

The landlord testified that he posted the One Month Notice on the tenants' door on December 5, 2018. The tenant submitted a copy of the One Month Notice.

The One Month Notice stated the following as grounds for the notice:

- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - Seriously jeopardized the health or safety or lawful right of 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 the other occupant

The One Month Notice stated the following as details in support of the notice to end tenancy:

Tenants continuously interfering [*sic*] loss of quiet [*sic*] enjoyment to other tenants, threatening other occupants, police were involved on several occasions [*sic*], late on rent continuously despite several warnings [*sic*]

The tenants testified that, despite the service of the One Month Notice, the landlord has affirmed this tenancy by recently issuing a notice of rent increase. The tenants testified that the landlord issued a notice of rent increase on December 23, 2018 which increased the rent to \$1,230.00 per month. The tenants provided a copy of the rent increase notice.

Analysis

The One Month Notice stated an effective vacancy date of January 10, 2019. However, Section 53(3) of the *Act* states that if notice to end tenancy is given for a date other than the date before the rent is due, then the effective vacancy date of the notice is corrected to that date. As rent is due on the first day of each month in this tenancy, consequently, the effective vacancy date of this One Month Notice is corrected to January 31, 2019.

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause:

- (i) the tenants are repeatedly late paying rent;
- (ii) (ii) the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord;
- (iii) (iii) the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- (iv) (iv) the tenants have engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant.

I will first analyze the claim that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

I will not consider evidence regarding disturbances from the tenants prior to the date that the prior one month notice issued on June 30, 2018 as those matters are *res judicata* as a result of the August 30, 2018 hearing.

However, there is significant evidence that the tenants have unreasonably disturbed another occupant even after the previous one month notice was issued on June 30, 2018. The upstairs tenant JR complained that the tenants were frequently screaming, fighting and loudly cursing. Furthermore, this conduct was so disturbing that tenant JR has also now vacated the property and initiated his own claim against the landlord for loss of quiet enjoyment relating to the tenants' conduct.

I do not find the tenants' explanation that the loud noises were the result of one of the tenants' medical problems credible. On a balance of probabilities, I find that the tenants have been repeatedly making loud noises which disturbed other occupants.

I find that this constitutes an unreasonable disturbance of another occupant pursuant to section 47 of the *Act*. Accordingly, I deny the tenants' request to cancel the One Month Notice. I will not analyze the other grounds raised in the One Month Notice as they are moot.

I find the form and content of the One Month Notice does comply with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective two days after service on the tenants.

Conclusion

I find the landlord is entitled to an order of possession 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 and 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: February 06, 2019

Residential Tenancy Branch