



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1097373 BC LTD DISCOVERY
VILLAGE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on January 16, 2019 (the "Application"). The Tenants applied to dispute a One Month Notice to End Tenancy for Cause dated January 14, 2019 (the "Notice").

The Tenants appeared at the hearing with B.R. to assist. The Property Manager and Agent for the Landlord appeared at the hearing for the Landlord.

The parties confirmed the correct spelling of the Tenants' last names and the Landlord's name and the correct spelling is reflected in the style of cause.

I explained the hearing process to the parties and answered their questions in this regard. The Tenants, B.R. and the Property Manager provided affirmed testimony. The Agent for the Landlord was not affirmed as she called into the conference late.

Neither party submitted evidence prior to the hearing. I addressed service of the hearing package and the Property Manager confirmed the Landlord received this.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the Landlord and Tenants in relation to the rental unit. Rent is \$800.00 per month due on the first day of each month.

Neither party submitted a copy of the Notice. I told the Property Manager and Agent for the Landlord that the Notice had to be submitted by 4:00 p.m. on the date of the hearing otherwise it would be cancelled. I told the Property Manager and Agent for the Landlord to call the RTB if there were issues with uploading the Notice.

The parties agreed the Notice states the grounds as follows:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The parties agreed the Notice also refers to illegal activity. The Property Manager acknowledged that none of the boxes under illegal activity were checked and did not seek to uphold the Notice based on illegal activity.

The parties agreed the Notice was served January 14, 2019 in person on the Tenants.

The Property Manager testified as follows in relation to the grounds for the Notice. The Tenants play their music too loud and disrupt other tenants. She continually has tenants phoning saying they are going crazy because of the music. The Tenants have been asked verbally several times to keep the music down. The Tenants have also been provided written notices. The Tenants are not following the rules. When she served the Notice, Tenant E.P. reacted in a disturbing manner.

R.P. spoke for the Tenants. He said it was his understanding the Tenants did turn the music down when asked. He testified that the Tenants have lived in the building for five

years without a problem and that this issue arose when they moved to a new unit in the building. He said the Tenants believe it is one individual who is targeting them. Tenant E.P. responded in a negative way to the Notice as she did not understand what was occurring. The Tenants are not trying to bother anyone.

In reply, the Agent for the Landlord submitted as follows. R.P. is not on site and does not have perspective on the situation. Everyone in the building must live by the same rules. The Landlord must consider all tenants. It may be that the prior neighbours of the Tenants did not have an issue with the music; however, the current neighbours do.

Analysis

I note that the Landlord did not submit the Notice or call the branch for assistance by 4:00 p.m. on the date of the hearing as directed. Someone for the Landlord called the RTB today and the Notice was uploaded today.

The Tenants disputed the Notice within the time limit set out in section 47(4) of the *Residential Tenancy Act* (the “Act”).

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties gave conflicting evidence about the circumstances. The Landlord submitted no evidence in support of their position. The Landlord did not submit copies of complaints made by other tenants, notices issued to the Tenants about noise, witness statements from other tenants or any evidence of this nature. In the absence of any evidence to support the position of the Property Manager and Agent for the Landlord, I am not satisfied the Landlord has met their onus to prove the grounds for the Notice and cancel the Notice. I note that I do not consider the incident between Tenant E.P. and the Property Manager to be a basis for issuing the Notice given the incident occurred when the Notice was served on the Tenants and not prior.

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 01, 2019

Residential Tenancy Branch