



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC LRE OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing, by teleconference, was held on April 25, 2019. The Tenants' applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenants' application and evidence package. The Tenant confirmed receipt of the Landlord's evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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 and Procedural Matters

The Tenants applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Tenants' application with the exception of the following ground:

- to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice").

During the hearing, I encouraged both parties to explain to me the most recent and relevant examples of what their issues are as they relate to this Notice, given they have a significant history of dysfunction. I also explained that each party must respect when the other party is speaking and wait until it's their turn to speak. Both sides had difficulty maintaining composure and had to be warned numerous times. The

Tenant, F.K., had to be asked to stop talking over others, and he refused, then abruptly told me to disconnect him. Shortly after saying this, he called the Landlord a loser and angrily disconnected.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the Notice on February 28, 2019. The Notice indicates the following reasons for ending the tenancy on the second page:

Tenant has allowed an unreasonable number of occupants in the unit/site.

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.

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property.
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- jeopardize a lawful right or interest of another occupant or the landlord.

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The Landlord issued the Notice for several reasons. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the first ground identified by the Landlord, as this ground is what my decision hinges upon.

I note the parties have had a contentious relationship for well over a year now, and there have been disputes about rent increases, and renovations. The Tenants expressed that the Landlord has attempted to raise the rent (additional rent increases) unsuccessfully in the past, and has issued a variety of Notices

to End Tenancy to different people in the building (4-plex). The Landlord stated that he was considering doing larger renovations, but has had to change plans. The Landlord stated that the Tenants have made everything for him more difficult, because every small issue turns into a hostile fight.

The Tenant, T.D., has lived in the unit for 4-5 years now, and within the last year, F.K. moved in, and is now living in the rental unit. The Landlord expressed that he has had numerous issues with F.K. since he has been in and out of the rental unit. The Tenants stated that the person living below them is the Landlord's friend, and his letter (in support of the Landlord) should not be given much weight. The Tenants also stated that if you compare the letter from 2019 that the Tenant living below wrote on behalf of the Landlord, with the letter he wrote a couple years back, it is contradictory, as he had his own issues and complaints with the Landlord. The Tenants feels the Landlord is conspiring with the Tenant below to get her and other Tenants out in order to charge more money for rent to new renters.

The Landlord provided a copy of a signed and dated letter from the unit below the Tenants, which states numerous complaints, including:

- they are suffering undue stress and loss of sleep and loss of quiet enjoyment as a result of the noise and disturbances coming from above
- loud music on a daily basis including "over the top music" rattling the walls and ceilings (light fixtures will sometimes rattle)
- the Tenants children create constant running, stomping, yelling, screaming, and play fetch with their 50-60 pound dog in the house
- other periods of loud banging, which he believes are from construction inside the suite.
- Being woken up at night by the Tenants' son, as recent as January 2019. The police have been called for these incidents
- Complaints about garbage being strewn about
- The Tenant below also stated he heard one of the Tenants above, F.K., obstruct the Landlord when he would come and do inspections, walkthroughs etc. The Tenant below heard F.K. refuse the Landlord entry and call the him "a fag", "a goof loser", and at one point the police had to be called.

The Landlord stated that at one point last year, the Tenant, F.K., threatened him, pushed him, and performed a "lewd" act when he attended the Tenants' residence.

The Landlord stated that he cannot continue to let the Tenants disrupt the person living below, as they have lost sleep, and enjoyment of their unit. The Tenant, T.D., acknowledged that her son sometimes comes over but she stated he has severe mental health issues, and is living in a foster home. T.D. stated that sometimes he will stay with her, but it is temporary, and it should not be held against her.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, nor will I speak to all of the evidence and issues between the parties. I will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy.

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid.

The Landlord entered into written evidence a copy of the Notice. The first issue the Landlord identified on this Notice was:

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

The Tenants state that the Landlord is fabricating the magnitude and frequency of the issues so that he can evict them and get more money. The Tenants pointed to several past disputes between either themselves and the Landlord, or other Tenants (within the 4-plex) and the Landlord. The Tenants believe the Landlord's history of trying to renovate, and raise rent should be considered when looking at the basis for this Notice. The Landlord and his agent both acknowledged that there have been other disputes for different matters, rent increase, renovations, other Notices to End Tenancy for different units. However, they state that this Notice was issued based on the Tenants' disruptive and hostile behavior.

In support of this, the Landlord described an incident last year where the Tenant, F.K. was threatening, rude and physically aggressive towards him when he attended the unit. The Landlord stated that he was pushed, threatened, and eventually the police had to be called. I note the Tenant, F.K., did not specifically address or refute the Landlord's allegations about being rude and physically aggressive on that occasion. Further, the Landlord provided a written statement from the Tenant below corroborating that F.K. was taunting and being rude to the Landlord when he would attend. I find the Landlord's statements on this matter, in conjunction with the witness statement from the unit below, provide a more compelling account of what occurred. As such, I have placed more weight on this version of events. I find it more likely than not that the Tenant, F.K., was rude, physically aggressive, and obstructive when the Landlord attended to do inspections. I find this has significantly interfered with the Landlord.

Further, since this incident, the Tenant below has expressed in his statement that he and his family are losing sleep, and losing quiet enjoyment due to all the constant noise upstairs (kids, dog, music). He stated that this happens on a daily basis. I note that some of these complaints occurred mid-day. The Tenants stated that they are aware the Tenant below works night shifts and sleeps at odd hours, but they feel they should not be responsible for his odd sleep schedule. The Tenants also stated that the only person who wrote a complaint is the person below. Having considered this matter, I note a reasonable amount of noise should be expected during daytime hours. However, the statement from the Tenant below indicates it was more than a "reasonable" amount of noise on a daily basis (music so loud the light fixtures rattle, yelling, stomping, screaming). I find the Landlord's testimony, his agent's testimony, and the written statement from the unit below provide a more detailed and compelling account of what occurs and are sufficient to demonstrate that the Tenants have unreasonably disturbed the occupant below.

Overall, and as stated above, due to F.K.'s behavior, in conjunction with the noise disruptions to the unit below, I find the Landlord has sufficient cause to issue the Notice. The Tenant's application to cancel the Notice is dismissed. The tenancy is ending, under the Notice, as described below.

Given my findings on this matter, it is not necessary to consider the other grounds listed on the Notice.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act*

requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the Notice complies with the requirements of form and content. I find the Landlord is entitled to an order of possession effective **April 30, 2019, at 1pm** after service on the Tenants.

Conclusion

The Tenants' application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective **April 30, 2019, at 1pm** after service 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: April 26, 2019

Residential Tenancy Branch