



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH PEACE COMMUNITY HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OLC

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated February 20, 2019 ("1 Month Notice"), and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

On April 23, 2019, this hearing began and after 19 minutes, the hearing was adjourned as the American Sign Language interpreter ("ASL interpreter") did not call into the hearing. An Interim Decision dated April 23, 2019, was issued, which should be read in conjunction with this decision.

On May 6, 2019, the parties reconvened and attending the teleconference for the landlord was agent LM ("agent"), and executive director CC. Attending the teleconference for the tenants were both tenants, advocate MB ("advocate") and the ASL interpreter SV ("interpreter").

At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed. The parties were affirmed and were provided the opportunity to provide testimony and to make submissions to me.

Both parties confirmed that they received and had the opportunity to review the documentary evidence served upon them. I find the parties were sufficiently served under the *Act* as a result.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to the parties and that any applicable orders would be sent to the applicable party for service.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If yes, should the landlord be directed to comply with the *Act*, regulation and/or tenancy agreement?

Background and Evidence

The parties agreed that the tenancy began on February 1, 2015. A copy of the tenancy agreement was submitted in evidence.

The tenants confirmed that they were served with the 1 Month Notice on February 20, 2019 and disputed the 1 Month Notice on March 1, 2019. The landlord listed two causes on the 1 Month Notice, namely:

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.
2. The 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 another occupant.

On the details of the cause, the landlord writes in part:

Summer 2017 fued with Unit #16, Sep10/18-still fueding with Unit #16 (is going to court May/19), Dec/18-Feb/19-many excessive noise complaints, Feb8/19 had meeting with tenants & unit#22 (complainant of noise complaints), Feb 17/19-Excessive Noise POLICE INCIDENTS 4-5 TIMES DEC-2018 – JAN 2019.

The agent was advised that I would not be considering evidence dating back to 2017 as I find that time period is too long ago to be considered relevant for the 1 Month Notice before me. Therefore, the agent described the following incidents:

1. September 19, 2018 – an exhibit being a warning letter to the tenants, which the tenants confirmed having received which states in part:

It has been brought to my attention that you and AK are still feuding and you both are causing a disturbance to the other tenants by yelling and swearing. Please refrain from feuding with A and causing a disturbance to the other tenants. Continued complaints in regard to this will be cause for eviction. I have attached a copy of our 'Good Neighbour' Policy for your review.

[Names anonymized]

2. November 30, 2018 – complaint by CW, neighbour of the tenants by text. In the text it states:

Morning, that idiot J has not hoarding shit out again. That brake drum and axle stub is sharp on every edge and weight 70+lbs and sharp angle iron sticking out of rims. It's a huge safety concern for anyone who walks by (kids) he better pray to all that is holy my daughter doesn't get hurt from the hoard

[Names anonymized]

The agent presented a text where tenant JM states that she will let her co-tenant JH know about the text complaint. The agent stated that the items were not removed until February 2019 which is three months later.

3. Anonymous call – the agent was advised that I could not afford any weight to anonymous evidence related to someone that refused to be identified, as I find that would be prejudicial to the other party. As a result, this anonymous call has not been afforded any weight in this decision.

4. December 7, 2018 – text from neighbour CW regarding noise. The texts reads in part:

Good morning I'm sorry to bother you so early. J in 23 has to stop his noise. 7 am start with it slamming wood and crap in the box of his truck and the driveway. He has no consideration of the people around him. He does this shit daily and is still at it. I hate bitching about him but he doesn't take me seriously when I try and say anything to him. Constantly dealing with his garbage on my side and on my driveway. Again sorry to bug you

[Names anonymized]

The tenants confirmed receiving a warning letter from the landlord dated December 7, 2018 which reads in part:

Please be advised again, that your tenancy at RL is at risk. **This is your first written warning.**

I have received additional complaints from tenants. The concern being brought forward are as follows:

- Excessive noise, banging and/or throwing wood around 7:00am in the morning on December 7, 2018.
- Verbal complaints in November 2018 of yelling, screaming and doors being slammed and banging on walls.

Section 23 of the tenancy agreement you signed says:

“Conduct – the tenant agrees that if any occupant or guest causes excessive noise or disturbances the landlord may end the tenancy”

Further reports of this nature, will result in your being evidence from the complex.

I would also ask you remove all the wood, brake drum, axle, and other stuff from your carport area.

[Names anonymized]

5. On the same date, December 7, 2018, the agent sent a text to tenant JM, which JM confirmed receiving and which reads in part:
Are you home right now
J needs to settle down. Now he just threatened C. There will be a second warning letter coming to him.

The agent presented an email from neighbour CW about tenant JW which reads in part:

On dec 7/2018 at approx. 1:30 p.m. J the neighbour in unit 23 threatened to break my neck. He is mad due to complaints against his constant noise. I have a witness that was standing there when he did it. My 4 yr old daughter is inside and this is going on. I certainly got upset at this and said come do it then...that's when all of a sudden he can't hear again and begins to record me on his phone telling him to feel free and attempt his threat. He is mentally unstable and this is in writing. He threatened with physical violence, knows I've had 2 spinal surgeries and then threatens to break it because someone complained about his noise...

[Names anonymized]

6. December 25, 2018 email and two emails dated December 27, 2018, were also presented. Both emails described the neighbour CW notifying the agent of being disturbed by noise of the tenant JH.
7. December 29, 2018 – the agent presented an email from neighbour CW, which reads in part:

Enough is enough with this goof, now he is throwing snow onto my driveway and again today I picked his garbage off my driveway. He is an inconsiderate pig and this game has me to the end of my rope. Pulls all kinds of shit, knowing I'm going to inform you and complain. Hence I become the pain in the ass. He and JM then hide behind being deaf and can't communicate and I'm just being mean. Cops were here tues and basically laughed at him as well. Something needs to be done with these people. All this shit because I complained to you for noise violations. The way it's supposed to be done.

[Names anonymized]

8. The agent presented another warning letter to the tenants that contained what I find to be an obvious error on the year, which should read January 4, 2019, instead of 2018. The warning letter reads in part:

It has been brought to my attention that J and CW are having a conflict.

...

Continued complaints in regard to this may be cause for eviction.

[Names anonymized]

9. The agent then stated the parties had a meeting together on February 8, 2019, and that a summary letter was written to the tenants dated February 15, 2019, which reads in part:

Thank you for meeting with us last Friday.

As discussed at the meeting we would like the following things to be done or abided by:

1. Change the settings on your vehicles so that when you lock the doors the horn does not sound – *You have until February 15, 2019 to comply*
2. Remove wood and woodworking stuff from your carpet area – *you have until March 8, 2019 to comply*
3. Abide by the 'Noise and Good Neighbour Policies' – see *attached Policies*
4. As per the Tenancy Agreement Article 23 "*The tenant agrees that if any occupant or guest causes excessive noise or disturbances the landlord may end the tenancy.*"
5. Please refrain from making faces, gestures and/or antagonizing your neighbours.
6. From now on all complaints must be written on a [complaint form] submitted to the office in a seal envelope. – see *attached copy of the procedures.*

We would also ask you not to go into other units when R, the maintenance man, is working in the units at RL. *This goes for all units, except for your own unit, whether occupied or unoccupied.*

Further incidents may result in eviction notice being issued.

The neighbour, CW, was called as a witness and was affirmed. CW confirmed that he was the person identified as CW who complained to the landlord about the tenants' noise and how he has been treated. CW provided the following witness testimony:

I was threatened by J who was upset that I called to complain about the noise and he approached me while I was outside having a cigarette. J pointed to his neck and made a snap motion like he would break my neck after he made a slow golf clap. Actually, he has physically attacked me twice. Last month in April when #3 was moving

out I was looking at dishes in there and the door busted open and J pushed me up against the wall and pushed his face against my face. I called the police to let the police deal with it and because J and the tenants in #3 are friends, charges were not pressed against J.

And a few weeks ago, I was in my doorway and J pulled up in his truck and walked up my driveway and pushed his face against mine. He did that three times before he left and I called the landlord.

The tenant and advocate did not have any questions for the witness on cross-examination.

The tenant JH ("J") claims that he did not make a snapping motion with his hands and that the witness misunderstood JH making the sign language sign "No, No, No" as if to say that "I was not going to get into it with him".

JH admitted that he did put his face nose to nose with the witness twice. The first occasion was because the witness made threats against his co-tenant, JM. The second occasion was that the witness had his door open and he thought he was selling stuff.

At this point in the hearing, the parties were advised that I had heard enough and that I was satisfied that the landlord had met the burden of proof to support the first cause listed on the 1 Month Notice and that I did not need to hear additional evidence.

The advocate asked to have another five minutes beyond the 68 minute hearing to present additional evidence, which I denied. The reason I denied the advocate's request was explained to all parties, which is that the actions of JH going up and touching noses with his neighbour, witness CW, was not reasonable and I find is an aggressive act which has no business as part of any tenancy. I will address this further below.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants disputed the 1 Month Notice within the 10 day timeline provided for under the *Act* the onus of proof then reverts to the landlord to prove that the 1 Month Notice is valid. The landlord is only required to prove one of the listed causes for the 1 Month Notice to be valid.

In the matter before me, while the parties clearly dislike each other, I find the admitted action of the tenant JH is both unreasonable and aggressive. Furthermore, I find there is no room for such behaviour in any tenancy. I also do not find JH to be credible as I find it highly unlikely that someone would go face to face and touch noses with someone to see if they are selling something. I consider on the balance of probabilities that to constitute assault and is an invasion of the personal space of CW. I also consider that the tenant's action was purposeful and meant to intimidate CW. This is also why the advocate was denied from being given five additional minutes to provide testimony or present evidence as the tenant admitted to the behaviour and I reject the tenant's version of events as they are illogical and highly unlikely.

Given the above, I dismiss the tenants' application to cancel the 1 Month Notice, without leave to reapply. I find the 1 Month Notice is valid. I find the landlord has met the burden of proof on the balance of probabilities, to support that tenant JH has significantly interfered with or unreasonably disturbed another occupant.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[Emphasis added]

I find the tenancy ended on March 31, 2019, which is the effective vacancy date listed on the 1 Month Notice. I also find that the 1 Month Notice does comply with section 52 of the *Act*. I have taken into account the agent's testimony which confirmed that the tenants have provided money for use and occupancy of the rental unit for May 2019. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **May 31, 2019 at 1:00 p.m.**

Conclusion

The tenants' application is dismissed without leave to reapply.

The 1 Month Notice issued by the landlord is upheld and is valid. The tenancy ended on March 31, 2019, which was the effective vacancy date listed on the 1 Month Notice.

The landlord has been granted an order of possession effective May 31, 2019 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision will be emailed to the parties as indicated above. The order of possession will be emailed to the landlord for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 8, 2019

Residential Tenancy Branch