



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRINITY PACIFIC INV. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 12, 2019. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on July 2, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenants with the 1 month notice dated June 12, 2019 in person. The 1 Month Notice sets out an effective end of tenancy date of July 31, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 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 or the landlord.

The details of caused provided are:

Aug. 12/2018 May 14/2010 Lobby door smashed out
April 4/2019 March 4/2019 Banging and yelling after 10pm and before 9am
May/June 2019 Noxious smoke rising to other floors threatening health of other tenants etc.

The tenant provided written details in the application for dispute:

March 4/2019 NOT TURE
June 2019 NOXIOUS SMOKE NOT TURE
Aug 12/2018 May 14 2010 LOBBY DOOR SMASHED OUT, NOT TURE.

Extensive discussions took place with both parties in which the landlord clarified his 1 month notice. The landlord stated reason #2 on the 1 month notice was based upon his allegations of drug use, but that the landlord cannot provide any specific details of any evidence other than supposition provided by other occupants of the rental property. On this basis, the second reason selected by the landlord on the 1 month notice is dismissed for lack of details and evidence.

The landlord also stated that the tenant had caused “noxious fumes” as a result of a complaint filed by a tenant on June 11, 2019 for an incident on June 10, 2019. The tenants disputed this claim stating that the tenant, S.J. does smoke cigarettes on occasion, but that she always smokes outside of the rental unit or on the deck. The tenants are not aware of any “noxious fumes”. The landlord was not able to provide any specific details of the “noxious fumes” or evidence of the source.

The landlord also claims that the tenants are the subject of numerous noise complaints. Most recently the 1 month notice dated June 12, 2019 was issued as a result of a

unreasonable noise complaint. The landlord called his witness a tenant living directly above the tenants. The witness, A.P. stated that on the early morning of June 10, 2019 the witness heard excess noises, heavy “stomping” on the floor and the slamming of the kitchen cabinets, which the witness stated was caused by the tenant, S.J. The tenants dispute this claim stating that she “doesn’t know” the cause of the noise. The tenants stated that she is harassed by the witness repeatedly and that the witness is lying. The landlord has referred to copies of Notice(s) dating from as early as May 14, 2010, November 1, 2011 and August 9, 2016. As well as emails from other tenants regarding complaints of excessive noise dated August 12, 2018, March 4, 2019 and April 4, 2019

I also note that although submitted, the tenants made no reference to any of their documentary evidence.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed testimony of both parties and find that the landlord did serve the tenants with the 1 month notice dated June 12, 2019 in person as confirmed by the tenants.

During the hearing, the landlord made numerous claims of significant interference/unreasonable disturbances, but provided only one date for relevant evidence for this 1 month notice dated June 12, 2019. The landlord’s claim is that the tenants have caused the unreasonable disturbance of other occupants (tenants of the rental property) through excessive noise at the early hours of the day. The tenants disputed this claim, but the landlord called a witness, A.P. who provided undisputed evidence that she lives above the tenants’ unit and was disturbed in the early hours of June 10, 2019 to what she heard as “stomping” on the floor and the slamming of cabinet doors. The witness stated that this was an ongoing issue as this has occurred repeatedly. The tenant when asked for her response stated, “I don’t know” or “I could have had a seizure”. The tenant stated simply that she disputes the claims of the witness and that this witness has repeatedly “harassed” her. In reviewing the testimony of the witness, I find it to be clear and concise, I found it credible. On this basis, I accept the evidence of the witness that the tenants have caused an unreasonable disturbance of excessive noise during the early hours of the day on June 10, 2019. I accept that the tenants have caused this type of disturbance on a repeated basis as per the submitted copies of the email complaints submitted by the landlord which date from

May 2010 to April 2019. I take note that atleast one of these notices gives a warning to the tenant in which the tenancy could be ended if this unreasonable behaviour were to continue. As such, I find that the landlord has provided sufficient evidence to satisfy me that the tenants have unreasonably disturbed other occupants (tenants) of the rental property. The 1 month notice dated June 12, 2019 is upheld. The tenants' request to cancel the 1 month notice is dismissed.

Conclusion

The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and 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: July 25, 2019

Residential Tenancy Branch