



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 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant KD (the "tenant") primarily spoke on behalf of both co-tenants. The landlord KL (the "landlord") confirmed they represented both named co-landlords.

As both parties were in attendance service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of consolidating their written materials in a single pdf file with numbered pages. Similarly, the parties uploaded multiple files of recordings, all of brief duration, with poor quality of recording. The file names are inconsistent and unclear as to their contents and files have been uploaded non sequentially so that it is confounding for the reader. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not are the landlords entitled to an Order of Possession?

Background and Evidence

This periodic tenancy began in June, 2018. The rental unit is one of the lower units of a four-plex building.

The landlord gave evidence that during the course of the tenancy there have been numerous noise complaints about the tenants from the occupants of the unit above the rental suite. During the course of this tenancy there have been two separate occupants of the upper suite and the landlord gave evidence that both have complained about the tenants' behaviour.

The landlord submitted into evidence copies of written complaints made by the occupants of the building, recordings of the noises created by the tenants and their hostile interactions with the upstairs occupants. The landlord provided evidence that the tenants have been warned verbally on a number of occasions about their behaviour.

The tenant confirmed that there have been hostile interactions with the other occupants of the building but says that the instigator has been the upstairs occupants. The tenant submitted into evidence recordings they have made of the noises from the upstairs occupants and letters describing the situation.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month

Notice. In the matter at hand the landlord must demonstrate that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

Considered in its totality, I find the evidence presented by the landlord to credibly show that the tenant has significantly disturbed the other occupants of the rental building and adversely affected their quiet enjoyment, safety and security. I accept the landlord's evidence that there have been multiple noise complaints from other residents regarding the tenant. I accept the evidence of the parties that on more than one occasion the tenant engaged the other occupants of the building in hostile exchanges. I accept the evidence that the tenants' behavior negatively impacted two successive tenancies for the upstairs suite.

I find the evidence given by the landlord to be consistent, forthright and compelling. I do not find the tenant's explanation that the upstairs occupants started the conflicts to be convincing or supported in evidence. Even if I were to accept the tenants' submission that there were noises emanating from the upstairs neighbors, I do not find the noise level of the upstairs neighbor to be an adequate justification for the conflicts. Regardless of whether the other occupants caused some disturbance to the tenants, escalating the situation through hostile engagement is not a reasonable response.

I find that the landlord has sufficiently shown on a balance of probabilities that the tenant has engaged in actions that have disturbed the other occupants and adversely affected their quiet enjoyment. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the

rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 23, 2019

Residential Tenancy Branch