



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTLEGAR VILLA SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFL OPR

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession pursuant to section 55; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing. The landlord had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenants did not attend the hearing. I kept the teleconference line open for fifteen minutes after the scheduled starting time of the hearing to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenants.

The landlord testified that they did not serve their cross-complaint and the landlord agreed to withdraw their cross-complaint. Accordingly, I dismiss the landlord's cross-application.

Preliminary Matter – Non-Appearance of Tenants at the Hearing

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the applicant tenants did not attend the hearing, and in the absence of any evidence or submissions, I order the tenants' application be dismissed without leave to re-file.

Preliminary Issue – Amendment of Landlord's name

At the commencement of the hearing the landlord advised that the party named as landlord on their application for dispute resolution was actually an employee of the landlord and not the landlord. In accordance with section 64(3)(c) of the *Act* and Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, the landlord's name was amended as reflected on the cover page of this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The landlord testified that they issued the One Month Notice on July 30, 2019 and the notice was personally served on the tenants the same day. The One Month Notice stated a move-out date of August 31, 2019. The One Month Notice stated the following as grounds for the notice:

- The tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord; and,
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord testified that the tenants were smoking in their rental unit and outside of their rental unit and the smoke was disturbing another tenant/property manager above the tenants. The tenant/property manager has submitted numerous complaints about smoke from the tenants' rental unit infiltrating her unit. The landlord produced a witness who testified that she observed a cigarette smoke smell in the tenant/property manager's unit and in the tenants' rental unit. The landlord produced an email which stated that the smoke smell in the tenant/property manager's unit above the tenants was investigated and it was determined that the smoke came through ventilation systems from the tenants' rental unit.

Analysis

The tenants have made an application to cancel the landlord's One Month Notice and that application has been dismissed. Section 55 of the *Act* states that when a tenants' application to cancel a notice to end tenancy for cause is dismissed, I must grant the landlord an order of possession if the landlord has issued a notice to end tenancy in compliance with the *Act*. I find the form and content of the One Month Notice does comply with section 52 of the *Act*.

Furthermore, section 47(1)(d) of the *Act* permits a landlord to end a tenancy if a tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord" or the tenant has "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant."

Based on the landlord's undisputed evidence, I find that the tenants have been smoking in or near their rental unit which has resulted in smoke infiltrating the unit above the tenants which has caused a "significant interference" and an "unreasonable disturbance" of another occupant.

Accordingly, I find the landlord is entitled to an order of possession effective **two days after service on the tenants**.

Conclusion

I order the tenants' application be dismissed without leave to reapply.

I order the landlord's cross-application dismissed without leave to reapply.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenant. If the tenant fails 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: October 07, 2019

Residential Tenancy Branch