



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WYNN REAL ESTATE LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenants were assisted by their family member. The corporate landlord was represented by its agents.

As both parties were present service was confirmed. The parties each testified that they had been served with 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*.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in February, 2019. The monthly rent is \$1,200.00 payable on the first of each month. The rental unit is the basement suite of a detached home with another occupant in the main floor. The rental unit contains a working fire alarm system.

The landlord issued the 1 Month Notice dated September 30, 2019 indicating the reasons for the notice as:

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 serious risk.

The landlord provided details of the cause as the tenants have caused the fire alarm in the rental unit to be triggered several times over a short span of time. The alarm has been triggered by the tenants on September 2, 15, and 23rd. Each time the alarm has been triggered the landlord has investigated the cause, and have had discussions with the tenants on their conduct.

The tenants confirm that the fire alarms were triggered in each instance by their use of the kitchen in the rental suite, and that they have been warned by the landlords. The tenants submit that the fire alarm is overly sensitive and triggered easily due to the poor ventilation in the rental unit. The tenants dispute that their activities have put the property at risk or that the repeated alarms have unreasonably disturbed any other occupants.

The parties also gave evidence regarding shared space in the rental building and its usage as storage by the tenants.

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 tenants have:

- 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 serious risk

I find that the landlords have provided sufficient evidence to meet their burden. The parties gave undisputed testimony that the fire alarm in the rental unit has been triggered multiple times due to the tenants' activities. I find that repeated fire alarms going off in a shared rental building to be an inherent disturbance of the other occupants of the building. I accept the evidence that on each instance the other occupants would be startled by the loud, insistent sounds of an alarm and be required to investigate its cause. I further find that a fire alarm, by its nature, warns occupants of potential danger so that it causes great anxiety and concern.

I do not find the tenants' submission that the fire alarm is overly sensitive to be a reasonable response. I find that the triggering of the fire alarm on multiple instances after being verbally warned, to demonstrate the tenants' obstinate refusal to amend their behaviour or take proper precautions. I find that it is unreasonable for the tenants to continue to use the rental unit in a manner that they were aware would trigger the fire alarm.

Furthermore, I find that the triggering of the alarm on multiple occasions is evidence that the tenants would not curtail their behaviour or learn from past experiences. I find that their testimony in the hearing, blaming the alarm and ventilation system in the rental unit, rather than acknowledging their own culpability demonstrates that this disturbance is persistent and unreasonable. I find that the tenants' failure to amend their behaviour after the triggering of the fire alarm and being informed of what behaviour will trigger the alarm to be unreasonable under the circumstances.

I further find that a fire alarm is designed to detect signs of fire in a rental suite and that its being triggered consistently demonstrates that the property is at some risk. I find that the tenants' testimony, acknowledging that they have set off the alarm but placing blame on the alarm system to be deeply troubling and evidence that the property remains at risk as the tenants have no intention of amending their activities.

I find that the landlord has demonstrated that there is cause for this tenancy to end and accordingly, dismiss the tenant's application and issue an Order of Possession. As the parties testified that the 1 Month Notice was served on the tenants on October 2, 2019, I find that in accordance with sections 47(2) and 53 of the *Act*, the effective date

of the notice is November 30, 2019. Accordingly, I issue an Order of Possession effective on that date.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **12:00PM on November 30, 2019**. 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: November 8, 2019

Residential Tenancy Branch