



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 29, 2019 ("1 Month Notice"), pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62.

The two tenants, tenant LC ("tenant") and "tenant OM," did not attend this hearing, which lasted approximately 27 minutes. The landlord and her two agents, "agent AM" and agent MB ("landlord's agent"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Agent AM is the husband of the landlord and the landlord's agent is the landlord's son-in-law. The landlord confirmed that her two agents had permission to speak on her behalf.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord's agent stated that agent AM personally served the tenant with the landlord's evidence package on November 7, 2019. In accordance with section 88 of the *Act*, I find that the tenants were personally served with the landlord's evidence package on November 7, 2019. I notified the landlord that I could not consider her evidence package at the hearing or in my decision because it was served late to the tenant, less than 7 days prior to this hearing, not including the service or hearing dates. This is contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

The landlord's agent testified that the tenant was personally served with the landlord's 1 Month Notice on August 29, 2019. The notice indicates an effective move-out date of September 30, 2019. In accordance with section 88 of the *Act*, I find that the tenants were personally served with the landlord's 1 Month Notice on August 29, 2019. The tenants indicated in their application that they personally received the 1 Month Notice on August 29, 2019, when they disputed the notice.

Preliminary Issue – Dismissal of Tenants' Application

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 re-apply.

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to the testimony of the landlord's agent, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This month-to-month tenancy began on July 1, 2019. Monthly rent in the amount of \$1,700.00 is payable on

the first day of each month. A security deposit of \$850.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord does not know if the tenants signed a written tenancy agreement because she only received an unsigned copy back from the tenants. The tenants continue to reside in the rental unit. The rental unit is the basement of a house, where the landlord occupies the upper floor with agent AM.

The landlord issued the 1 Month Notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *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;*
- *Breach of a material term of the written tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord's agent testified regarding the following facts. The landlord does not want to pursue the 1 Month Notice based on illegal activity and withdraws this claim. The tenants have breached a material term of the tenancy agreement addendum by allowing a cat inside the rental unit when pets are not allowed, and a pet deposit has not been paid. The rental unit was renovated when the tenants moved in and a cat can damage the unit. The tenant claimed that the cat was a gift from her daughter and made the landlord feel bad, so no action was taken until other issues arose.

The landlord's agent testified regarding the following facts. The tenant has caused significant interference and unreasonable disturbance to the landlord and agent AM. The tenant slams the door when she hears the landlord is upstairs or when the landlord's guests are over. The tenant allows the cat to come in and out of her unit, leaving the door open. The tenant has "chastised" the landlord's grandson for petting her cat, when she has met him before and knows who he is. The tenant often yells, swears and screams around her house, causing the neighbours to call the police. The tenant sets off the smoke alarm, probably because she is teaching her four-year-old daughter to cook at the rental unit. The tenant is suspected of vaping at the rental unit. The tenant has negative interactions with the landlord, causing the landlord and agent AM to hide or avoid going in the backyard, where they do gardening.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenants received the notice. The tenants personally received the 1 Month Notice on August 29, 2019 and filed their application to dispute it on September 5, 2019. Therefore, the tenants are within the time limit under the *Act*. The burden shifts to the landlord to prove the reasons on the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant significantly interfered with and unreasonably disturbed the landlord. As I have found one of the three reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

The tenants did not appear at this hearing to present their submissions. I accept the undisputed testimony of the landlord's agent that the tenant caused unreasonable noise and disturbance at the rental unit. I find that the tenant's pattern of behaviour of yelling, swearing, screaming and slamming doors, has caused significant interference and unreasonable disturbance to the landlord, such that neighbours have called the police, and the landlord and agent AM are both afraid to go outside in the backyard, in order to avoid negative confrontations.

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 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.

Accordingly, I dismiss the tenants' application to cancel the landlord's 1 Month Notice, without leave to reapply. I find that the landlord's 1 Month Notice, dated August 29, 2019, complies with section 52 of the *Act*.

I issue an order of possession to the landlord against the tenants, effective at 1:00 p.m. on November 30, 2019. During the hearing, the landlord's agent confirmed that the

tenants paid rent for November 2019, which I find entitles them to possession of the rental unit until the end of the month.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective at 1:00 p.m. on November 30, 2019. Should the tenant(s) or anyone 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 14, 2019

Residential Tenancy Branch