



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) dated December 31, 2019, and to recover the filing fee for this application. The matter was set for conference call.

Both the Landlords, two witnesses and the one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords were each provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the Notice issued on December 31, 2019, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

Both parties agreed that the tenancy began on September 1, 2007, that rent in the amount of \$700.00 is to be paid by the first day of each month, and the Landlords collected a security deposit of \$350.00 and at the outset of this tenancy.

Both parties also agreed that the Landlords served the Notice to end tenancy to the Tenants on December 31, 2019, by personal service at the rental unit. Both the Landlords and the Tenants submitted a copy of the Notice into documentary evidence.

The reason for the Notice was checked off as follows:

- *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*
- *Tenant or 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 or the Landlord*
 - *Jeopardize a lawful right or interest of another occupant or the Landlord*

The Notice states that the Tenants must move out of the rental unit by January 31, 2020. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving the Notice.

The Landlords testified that the Tenants have been causing problems at the rental property and that they have been harassing and threatening the occupants of the downstairs rental unit as well as the Landlords. The Landlords testified that they have spoken to the Tenants many times regarding their behaviour, and their son's behaviour towards the occupants of the downstairs rental unit but that the Tenants continue their bad behaviour towards the downstairs occupants.

The Landlords testified that they had received numerous verbal and written complaints regarding the Tenants and their Tenants' son behaviour. The Landlords testified the downstairs occupants are concerned for their safety and that the RCMP had been called to the rental property due to the Tenants and their son's aggressive behaviour. The Landlords testified that the RCMP officer had advised them that possible criminal harassment charges would be investigated if the behaviour continued. The Landlords provided an email from the RCMP officer into documentary evidence.

The Landlords also testified that they made two attempts to mediate a resolution between the Tenants and the downstairs occupants but that the Tenants had not responded to either of their requests for a meeting. The Landlords submitted two emails into documentary evidence of their attempts to arrange a meeting between themselves, the Tenant and the downstairs occupants.

The Landlords testified that they installed additional soundproofing between the two-unit in an attempt to resolve this issue but that the aggressive and threatening behaviour of the Tenants continued.

The Landlords provided two witness to these proceedings:

Witness #1 Testimony:

Witness #1 testified that the Tenants had threatened her with physical violence stating they were going to “End Her” and loudly discussed between themselves, so the witness could overhear when they were going to take physical action against Witness #1.

Witness #1 also testified that the Tenants and their son would stomp on the floor (the witnesses ceiling) yelling for them to “Shut that Baby up” and “Stop the dog from barking” and scream foul language at them. Witness #1 continued in her testimony, testifying that on one occasion, the stomping was so loud and aggressive that it shook their unit and caused the light to flicker.

Witness #1 testified that they were very stressed and afraid to be in their home due to the aggressive behaviour and threats of physical violence from the Tenants and their son.

Witness #2 Testimony:

Witness #2 testified that from the first day that they moved in, the Tenants had been very loud, stomping on their floor (the witnesses ceiling) while screaming and yelling at the witness and their family to shut up.

Witness #2 testified that they have two young children who are very frightened to be in their home due to the behaviour of the Tenants and their son. Witness #2 testified that the Tenants would stomp on the floor whenever the baby would cry, but that their actions of stomping would cause the baby to cry more, which would lead to heavier stomping and louder screaming from the Tenants. Additionally, witness #2 testified that their other child, a young boy, would no longer sleep in his bed as he was too afraid to be in his room alone due to the behaviour of the Tenants and their son.

Witness #2 also testified that she was very stressed and afraid for her children due to the aggressive behaviour and threats of physical violence from the Tenants and their son.

The Tenant testified that the claims being made against them and their family are untrue, that they are not harassing or threatening the downstairs occupants. The Tenant testified that she had stomped on the floor once and that the baby crying and the dog barking was disturbing to them. The Tenant testified that due to the noise coming from the downstairs occupants, the they, the Tenants were sleep deprived but that they had not spoke to the downstairs occupants about their concerns.

The Tenant also testified that the RCMP had not contacted them regarding this situation.

The Tenant testified that they want to come to an agreement so they could all respectfully live together. When asked why the Tenant did not respond to the Landlords' request to mediate, the Tenant replied that they did not go because witness #2 had been rude to them in the driveway.

The Tenant testified that they believe that the people downstairs need to hold their baby more to stop the baby from crying and that they should walk their dog more to stop the dog from barking so much.

The Tenant testified that the Landlords were making this untrue claim of harassment against them as the Landlords want to end their tenancy so they can re-rent their unit for more money. The Tenant testified that the Landlords had attempted to issue an illegal rent increase and that when the tenants refused to pay the increased amount, their relationship had turned cold. The Tenant submitted a copy of an email string between the Tenants and the Landlords regarding a rent increase into documentary evidence.

The Landlords testified that the downstairs occupants do have a dog and a baby and that the dog does bark, and the baby does cry. However, they have attended the rental unit several times over the last few months and that they believe the barking and crying are at normal levels of everyday life. The Landlords testified that it is the Tenants who are being unreasonable and inappropriate in their response to having people living downstairs.

The Landlords testified that they had offered to rent the full house to the Tenants at an increased rate if rent, before they secured the downstairs occupants as renters but that the Tenants had refused the offer. The Landlords also testified that there were no hurt feelings when the Tenants turned down their offer.

The Landlords testified that they believe the Tenants' behaviour towards the new occupants downstairs, and especially towards their children, to be completely unreasonable, and to be sufficient grounds to end this tenancy. The Landlords are requesting an order of possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Tenants and the Landlords that the Notice to End Tenancy was personally served on the Tenants by the Landlords on December 31, 2019.

Therefore, I find that the Tenants were in receipt of the Notice to End Tenancy as of December 31, 2019.

Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenants had until January 10, 2020, to file an application to dispute this Notice. I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed their application on January 7, 2020, within the legislated timeline.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I find the testimony of the Landlords' and the

witnesses, combined with the written complaints, emails and text messages to be a credible account of the behaviour and actions of the Tenants and their guests on the rental property. I also find that the other occupants of the rental property and the Landlords would have been disturbed by the actions and behaviour of the Tenants and their guests.

For the reasons stated above, I find that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlords. Consequently, I dismiss the Tenant's application to cancel the Notice issued on December 31, 2019.

Section 55(1) of the Act states:

Order of possession for the landlord

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.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

Pursuant to section 55 of the *Act*, I award the Landlords an order of possession effective not later than 2 days after service of this Order. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their application to cancel the notice, I find the Tenants are not entitled to recover the filing fee for this hearing.

Conclusion

The Tenants' application to cancel the Notice, issued on December 31, 2019, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant the Landlords an **Order of Possession** effective not later than **2 days** after service of this Order. The Landlords are provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: March 18, 2020

Residential Tenancy Branch