



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the One Month Notice), issued pursuant to section 47 of the Act; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice), issued pursuant to section 46 of the Act.

The respondent (landlord) RH and witnesses RR, CB and AP called into this teleconference at the date and time set for the hearing of this matter. The applicants (tenants) did not, although I waited until 1:49 P.M. to enable them to connect with this teleconference hearing scheduled for 1:30 P.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the respondent and I were the only persons who had called into this teleconference.

The landlord confirmed he received the Notice of Hearing and evidence from the tenants on March 22, 2020. The landlord affirmed he served his evidence to the tenants. I find that all parties have been served with the required documents.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Tenants’ application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

Accordingly, in the absence of any attendance at this hearing by the applicant I order the application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Preliminary Issue – Updated Address of Tenancy

The landlord amended the application to change the tenancy address (the updated address is reproduced on the cover of this decision). Section 64(3)(c) of the *Act* allows me to amend the application to update the address of the parties, which I have done.

Preliminary Issue – 10 Day Notice withdrawn

At the outset of the hearing the landlord affirmed the 10 Day Notice served to the tenants was cancelled, as the tenants paid the utilities in arrears.

The tenants had applied to cancel the 10 Day Notice. This claim is now moot since the 10 Day Notice was voluntarily cancelled by the landlord.

Section 62(4)(b) of the Act the dismiss all or part of an application for dispute resolution which does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the claim for cancellation of the 10 Day Notice.

Issues to be Decided

1. Are the tenants' entitled to cancellation of the Notice?
2. If the tenants' application is dismissed, is the landlord entitled to an Order of Possession based on the One Month Notice?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is his obligation to present the evidence to substantiate his claim.

The landlord affirmed the tenancy started on October 01, 2019. Rent is \$1,650.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$825.00 and a pet damage deposit of \$825.00 were collected and the landlord still holds it in trust. A copy of the tenancy agreement was submitted into evidence. The tenants continue to reside at the rental unit.

The tenancy agreement addendum, signed by tenant KT on October 01, 2019, states: "4.No Smoking of any substance allowed inside the building including the garage."

A copy of the two first pages of the One Month Notice was provided. The reasons to end the tenancy are:

- The tenant has allowed an unreasonable number of occupants in the unit/site.
- The 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:
 - Damage the landlord's property.
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant

The One Month Notice is dated March 04, 2020 and was posted to the tenants' door on that date. The landlord affirmed that after he posted it to the tenants' door he observed the tenant open the door and get the One Month Notice. The effective date of the Notice is April 29, 2020.

The landlord affirmed the letter dated March 04, 2020 (submitted into evidence) was delivered as an attachment of the Notice and explained the details of the cause. The letter states:

Re: Feb 01, 2020 Inspection of [tenants' address]

To [tenant];

On Feb 01, 2020 I carried out an inspection on [tenants' rental unit] and found the following items of concern:

1. Two bedroom screens are still off of windows after being requested both verbally and by text messages to re-install them. These need to be installed ASAP.
2. Your bedroom closet doors are off and placed in the living room. These need to be installed ASAP before they mark the walls.
3. [tenant] bedroom smelled of cigarette smoke. She admitted that her friend had been smoking in the bedroom. This is violation of our Tenancy Agreement and grounds for eviction.
4. The Front Entrance Closet door top track is missing and needs to be installed. This has caused the door to contact and damage the wall beside it which needs repaired.
5. The inside surface of the garage and entrance doors paint has been badly damaged. This needs repaired.
6. The doorbell switch has been removed and the wires are hanging bear. The doorbell switch needs to be re-installed.

Yours sincerely,
[landlord]

The landlord affirmed the tenants constantly receive a large number of guests that park their cars blocking the neighbour's garage. The landlord submitted into evidence text messages sent to the tenants on December 10, 2019:

Hi [tenant], do you have someone parked in my spot at the back. If so please have it moved ASAP. Thanks, [landlord]

Yes, sorry about that they didn't know not to park there. They have moved.

Thanks. In the future please ask your guests where they have parked. Thanks.

The landlord affirmed he asked the tenants not to block the neighbour's garage in December.

A text message received from the tenants' neighbour on March 03 was also submitted into evidence:

Hey do you know whats going on with the renters next to our unit? There was a truck running outside wih windows smashed in and the ignition looked janked up. [anonymized] knocked on the door and got them to move it because it still running and blocking the garage. A guy that came out looked high as a kite and not on weed or booze.

The landlord affirmed the tenants are smoking and using drugs inside their rental unit and submitted into evidence a photograph of a syringe thrown on the garden in front of the tenants' rental unit. The landlord affirmed he inspected the rental unit on February 01, 2020 and concluded the tenants were smoking in the rental unit. The landlord immediately asked the tenants not to smoke in the rental unit and warned them they could be evicted if they continue to smoke in the rental unit. The landlord affirmed the tenants continued to do so.

The landlord also submitted an e-mail received from witness AP on March 06, 2020.

Analysis

Based on the undisputed landlord's testimony, I find the tenants are deemed served the Notice on March 07, 2020, three days after the landlord posted it to the tenants' door, in accordance with sections 88 (g) and 90 (c) of the Act. I find that the tenants' application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47 (4) of the Act.

The email received by the landlord on March 06, 2020 is not relevant, as it was received two days after the Notice was issued.

Section 47 of the Act allows a landlord to end a tenancy for cause:

(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

d)the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
[...]
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
- (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property

Based on the landlord's undisputed testimony and text messages dated December 10, 2019 and March 03, 2020, I find the tenants or persons admitted by the tenants on the property have been parking their cars blocking the neighbour's garage. The tenants have been asked by the landlord to stop blocking the neighbour's garage, and yet they continue to do so.

I find the action of the tenants of repeatedly blocking the neighbour's garage has significantly interfered and unreasonably disturbed other occupants of the rental unit complex. I therefore find the landlord is entitled to end this tenancy, pursuant to section 47(1) (d)(i) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the One Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

I find that pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession effective April 29, 2020, the effective date of the Notice.

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

The tenants' application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective on April 29, 2020. 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: April 27, 2020

Residential Tenancy Branch