



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HY WEST HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, OPC, MNDCL-S**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to sections 47 and 55;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The agent SO attended for the landlord (“the landlord”). KT attended for the tenants (“the tenants”).

The hearing process was explained, and an opportunity was given to ask questions about the hearing process. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the landlord served the tenants in accordance with section 89 of the *Act*.

The landlord withdrew their claim for a monetary order under 67 and authorization to apply the security deposit to the award.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on January 1, 2020 for monthly rent of \$1,000.00 payable on the first of the month. The tenant provided a security deposit of \$500.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement which contains a clause prohibiting pets.

The landlord testified that the unit is in a building with 8 units in total. The building is older and sound travels easily.

The landlord testified that as soon as the tenants moved in, the other tenants started to complain to the landlord about noise generated by the tenants. The complaints included the following:

1. There is a small dog in the unit which barks loudly and frequently;
2. The other occupants in the building can hear the tenants loudly arguing and admonishing the dog to be quiet;
3. The landlord went to pick up the rent on January 31, 2020 and a dog was in the unit; the landlord believed the dog resided in the unit;
4. The male tenant is suspecting of engaging in illegal drug dealing based on frequent short visits by people to the unit which involved the buzzers being rung for the wrong apartments, people "coming and going all night", bicycles being carried into the unit causing damage to the walls and stairs, and "non-stop traffic" of visitors to the unit;

5. One occupant of an apartment informed the landlord verbally on January 9, 2020, that the occupant had witnessed the male tenant engaged in open drug dealing outside the building;
6. Occupants of other apartments expressed concern about health issues because of the State of Emergency and the non-compliance of the tenants and their guests with guidelines including social distancing.

The landlord testified to verbal warnings to the tenants which were ignored resulting in the problems continuing.

The landlord issued a One Month Notice to the tenants dated January 15, 2020 with an effective date of February 29, 2020. The tenants acknowledged receipt. A copy of the Notice was submitted as evidence. The Notice sets out the following for the grounds for issuance:

1. The 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 significant risk.
2. 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 another occupant.
 - Jeopardize a lawful right or interest of another occupant or the landlord.
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The landlord primarily relied on the first ground above, that is, that the tenant has significantly interfered with or unreasonably disturbed other occupants of the building. The landlord submitted a supporting letter of complaint which was filed as evidence. The landlord testified to numerous ignored warnings to the tenants.

The tenants denied all the landlord's allegations. The tenants stated they do not own a dog; the dog heard/seen by the landlord was a "girlfriend's dog that was visiting". The tenants denied all suggestions that they are engaged in any illegal activity or that their activities generate noise or concern to other occupants.

Analysis

The landlord entered into written evidence a copy of the Notice which complies with section 52, service of the Notice being acknowledged by the tenant. The effective date of the Notice is February 29, 2020.

While several causes are listed in the Notice, the primary issue the landlord upon which the landlord relied was the following:

Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

I have considered the credibility of the parties. The landlord was well-prepared and submitted convincing reasons for issuing the Notice after only two weeks of the tenancy. The landlord's testimony was supported by a believable letter of complaint. I accept the landlord's testimony that the tenants were notified of the issues with noise, the pet, the coming and goings of visitors during the night, and the other evidence described above.

I have considered that the tenants deny responsibility for the matters alleged by the landlord. I do not accept the tenants' account. I prefer the version of events to which the landlords testified as supported by a witness statement. I give greatest weight to the landlord's testimony as supported by evidence.

I find that the landlord has met the burden of proof on a balance of probabilities with respect to the above ground for issuance of the Notice and all other claims.

Section 47(5) of the Act states that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As there is no evidence before me that the tenants have filed an Application for Dispute Resolution seeking to cancel the One Month Notice, I find the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of February 29, 2020 and must vacate the rental unit, pursuant to section 55.

I therefore grant the landlord an order of possession effective two days after service.

Filing Fee

As the landlord has been successful in this application, I grant the landlord a monetary award in the amount of \$100.00 for reimbursement of the filing fee. I authorize the landlord to deduct \$100.00 from the security deposit as reimbursement for the filing fee.

Conclusion

I find the landlord is entitled to an order of possession effective two days after service on the tenants. I authorize the landlord to deduct \$100.00 from the security deposit as reimbursement for the filing fee.

The order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the orders with the Supreme Court of British Columbia to 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: June 11, 2020

Residential Tenancy Branch