



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Earl R Wallace Electric & Heating
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC CNC FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55.

The tenants applied for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- Authorization to recover their filing fee pursuant to section 72.

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 corporate landlord was represented by its agents (the “landlord”).

At the outset of the hearing the parties confirmed that the landlord is a corporate entity and not the individual named in the tenants’ application. With the consent of the parties the tenants’ application was amended to identify the correct corporate entity as the respondent.

The tenants testified that they had not served the landlord with their application. The tenants confirmed receipt of the landlord’s 1 Month Notice dated July 7, 2020, the subsequent landlord’s application and evidence. Based on the testimonies I find that the tenants were duly served with the landlord’s materials in accordance with sections 88 and 89 of the Act. I find that that the landlord was not served with the tenant’s application or materials.

Issue(s) to be Decided

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

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This periodic tenancy began in April, 2019. The monthly rent is \$1,100.00 payable on the first day of each month. A security deposit of \$550.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit building with 11 total suites.

The landlord issued 1 Month Notice dated July 7, 2020. The reasons provided on the notice for the tenancy to end is:

Tenant has allowed an unreasonable number of occupants in the unit/site

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.*

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 tenants confirmed receipt of the 1 Month Notice on or about July 7, 2020. They filed an application to dispute the notice on July 15, 2020 and did not serve it on the landlord.

The landlord provided evidence of the tenants' behaviour including the level, frequency and duration of noise from the suite leading to multiple complaints, the condition of the rental property as the tenants store items on common areas and pathways, and instances where police have been called. The landlord submitted into evidence copies

of written complaints from other occupants of the building and photographs of the rental property.

The tenants dispute that they have engaged in behaviour that would give rise to an end of the tenancy and say that they have received no prior warnings about their conduct.

Analysis

Section 59(3) of the *Act* and Rule 3.1 of the Rules of Procedure establishes that a person who makes an application for dispute resolution must give a copy of the application to the other party.

The tenants testified that after filing the tenant's Application for Dispute Resolution with the Residential Tenancy Branch (the "RTB") on July 15, 2020 they took no further action to serve their application on the landlord. The landlord testified that they have not received the tenants' application.

The tenants have not served the landlord in a manner required by section 89(1) of the *Act* or at all. Accordingly, I dismiss the tenants' application in its entirety as I am not satisfied that the landlord was served with the tenants' application for dispute resolution.

Section 55 of the *Act* provides that:

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 dismissed the tenants' application, and I find that the landlord's 1 Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord's agent, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I am satisfied with the landlord's evidence by way of their testimony, written complaints from other occupants and photographs that the tenants have engaged in behaviour that has significantly interfered with and unreasonably disturbed other occupants and the landlord. I accept that the level, frequency and duration of noise caused by the tenants has been a source of considerable disturbance.

Accordingly, I find that the landlord is entitled to an Order of Possession pursuant to section 55, enforceable on the effective date of the notice.

Conclusion

I dismiss the tenants' application in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **12:00pm on August 31, 2020**. Should the tenants 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: August 21, 2020

Residential Tenancy Branch