Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BIVIORA HOLDING COMPANY LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, OLC, FFT

Introduction

In this dispute, the tenants seek to cancel a One Month Notice to End Tenancy for Cause (the "Notice") under section 47 of the *Residential Tenancy Act* (the "Act"). They also seek an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act. And, they seek recovery of the filing fee under section 72 of the Act. Finally, it should be noted that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

The tenants filed an application for dispute resolution on August 4, 2020 and a dispute resolution hearing was held on September 21, 2020. The tenants and the landlord's agent attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. I confirmed the parties' names and have amended the application to reflect the correct legal name of the landlord, which is a corporation; I have removed the agent's name from the application.

Regarding the service of evidence, the landlord's agent (the "landlord") testified that he served copies of the evidence on the tenants, who acknowledged receiving it. The tenant (S.R.) said that he dropped off documentary evidence at the Residential Tenancy Branch on September 15, 2020; however, due to this last-minute dropping off and office quarantine procedures, the evidence was not uploaded to the file and was not accessible to me. I explained that respondents are required to submit evidence a minimum of 10 days before a hearing, which is required under the *Rules of Procedure.*

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to an order under section 62 of the Act?
4. Are the tenants entitled to recovery of the application filing fee?

Background and Evidence

The landlord gave evidence that the tenancy began on March 1, 2020. Monthly rent is $1,100.00 for the two-bedroom rental unit and the tenants paid a security deposit of $550.00. A copy of the written tenancy agreement was submitted into evidence.

Regarding the Notice, the landlord testified that it was issued because the tenants were breaching the terms of the tenancy agreement by disturbing “all of the other tenants” and that these disturbances are unacceptable. The landlord gave the tenants three breach (or, warning) letters on May 13, May 22, and on August 1, 2020. Copies of the breach letters were submitted into evidence.

The first breach letter had to do with one of the tenants dancing in the lobby and three or four tenants who walked by the dancing tenant were “very distressed” and were disturbed. Images from a video recording of the tenant’s behavior were submitted into evidence. The other two letters had to do with the tenant’s or tenants’ making noise, yelling, swearing, and using profanities. The landlord testified that the language is even more unacceptable given the presence of young children in the building.

Submitted in evidence and referred to by the landlord were various complaint letters purportedly authored by other residents in the building. There were many names of the various tenants and they provided their unit numbers and contact information on many of the letters. The letters are varied and contain substantial references to the tenants’ noise and behavior.

One complaint latter (written on a ruled Post-It Note) dated May 16, 2020 refers to the tenants and “THE HAVE VULGAR OBNOXIOUS LUDE BEHAVIOR 24/7. [. . .] THEY’RE SO LOUD THEY CONSTANTLY WAKE UP OUR BABY.”

Another complaint letter (from another resident) of May 17, 2020 states, *inter alia,* that

> On several occasion [. . .] during the day/middle/wee hours of the morning there is constant fighting, profanity, yelling and general disruptiveness both inside the apartment as well as on the balcony.
>
> They have woken myself as well as my husband on several occasions 3-4 AM.
>
> My daughter has also heard yelling screaming terrible language. [. . .]
>
> I'm at the point of #1 writing this letter my 2nd option will be to end by tenancy."

Many more of the complaint letters, which appear to be written by several tenants in the building, bear a similar theme of noise, foul language, and daily or nightly disturbances.

Tenant (D.C.) testified that the other tenant's "a bit loud" and uses the "F" word once in a while, but "no other words in the dictionary." He continued, saying that just last night he spoke with three females who presumably live in the building, and who said that the landlord was "asking them to get dirt on us."

According to the tenant, the landlord had employed spies throughout the building to spy on them and get information that would assist the landlord in getting them out.

Tenant (S.R.) argued that the complaint letters appear to have all similar language and were likely written by one person. "They all say the same thing," he remarked. He also testified about an issue involving the landlord not wanting him to see the assistant property manager: "she's 38 and she's cute."

On August 3, 2020, the landlord, who had "given them a chance" ended up issuing the Notice, a copy of which was submitted into evidence, and which indicated on page two that it was being issued for two reasons. First, the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord." Second, the tenant has "seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Application for Order Cancelling the Notice

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. The Notice in this case was issued under sections 47(1)(d)(i) and (ii) of the Act, which states that

> 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,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

In this dispute, the landlord provided substantial, consistent, and supportive documentary evidence of the tenants' continuous behavior that has, I find, both significantly interfered with and unreasonably disturbed other occupants of the residential property. Indeed, there are a total of 6 complaint letters from 5 other rental units, and I have no doubt that there were likely more tenants who were unreasonably disturbed by the tenants' behavior. Moreover, the landlord issued three warning letters to the tenants regarding the behavior, and the behavior continued. The behavior and the resulting complaint letters span a period from May 16, 2020 up until August 2, 2020. The complaint letters only appear to stop occurring after the landlord issued the Notice.

I am not persuaded by the tenants' argument and testimony that they were not responsible for any of the alleged behavior. While the tenant's behavior in the lobby is perhaps disconcerting to some tenants, this is a rather mundane incident for which I do not find rises to the level that might justify the Notice being issued. However, the continuous noise and swearing from the tenants over a period of at least, if not longer than, three months is wholly unacceptable. Nor am I persuaded by the tenants' argument that the landlord has employed spies to gather "dirt" on them. The tenant D.C. said that "3 ladies" had told them about the landlord's alleged dirt gathering, yet none of those ladies were called as witnesses.

And, I remain unconvinced that the complaint letters were drafted by one person. The language, grammar, diction, and handwriting styles between the various letters are sufficiently broad that I find that they were more than likely authored by different individuals. That various letters “all say the same thing” is merely indicative of the consistency for which the letters are about, namely, the tenants’ behavior. For these reasons, I do not accept the tenants’ arguments or testimony regarding the central issues that gave rise to the Notice being issued.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the first ground on which the Notice was issued. Namely, I find that the tenants have significantly interfered with and unreasonably disturbed another occupant of the residential property. Having found that the Notice was validly issued on this ground I need not consider the remaining, second ground.

For these reasons, I dismiss the tenants’ application to cancel the Notice.

Order of Possession

Section 55(1) of the Act states 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.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

> In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
> (b) give the address of the rental unit,
> (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
(d.1) for a notice under section 45.1 […], be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
(e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the Notice and find that it complies with section 52 of the Act. Further, as I have dismissed the tenants' application, I therefore grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this Decision, to the landlord.

While I have considered the joint submissions of the parties in respect of the date that an order of possession may go into effect (that is, October 31, 2020), having carefully reviewed the evidence I find that this tenancy must end much sooner. It is unacceptable, and unreasonable, for the many other occupants of the building – not to mention young children and babies – to have to wait until the end of October.

For this reason, I grant the landlord an order of possession that will go into effect two (2) days after it is served on the tenants.

2. Application for an Order under section 62 of the Act

The tenants applied for an order under section 62(3) of the Act, which states that an arbitrator "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

The tenants provided no argument or submissions regarding this aspect of their application. Therefore, I dismiss this aspect of their application without leave to reapply.

3. Claim for Application Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee.

As the tenants were unsuccessful in their application, I therefore dismiss their claim for reimbursement of the filing fee.

Conclusion

I hereby dismiss the tenants' application without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenants, and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 21, 2020

Residential Tenancy Branch