



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 the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee from the landlord 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 parties each testified that they were in receipt of the materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

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 the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in September 2019. The current monthly rent is \$2,050.00 payable on the first of each month. A security deposit of \$1,000.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a detached home with the landlord occupying the other portion of the building with

The landlord issued a 1 Month Notice dated August 15, 2020. The reasons provided on the notice for the tenancy to end are:

- 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 adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord submits that there have been ongoing hostile interactions with the tenant which they characterize as emotionally abusive and in excess of what would be a reasonable reaction to the circumstances. The landlord testified that these interactions, primarily with the named tenant MR, have caused them fear and anxiety. The landlord says that in addition to their own interactions they have witnessed and been informed of other altercations between the tenant and neighbors. The parties said that the reasons for these interactions include warnings about the tenant's smoking on the rental premises, noise from yardwork or maintenance, neighbors driving and walking by and children playing in the area.

The landlord submitted into documentary evidence letters from neighbors as well as window cleaners who were hired by the landlord to work on the property and audio recordings of interactions with the tenants. The neighbors state in their letters that the tenant MR has yelled at them and their children on a number of occasions. The letters also state that the tenant drives aggressively in their residential neighbourhood which alarms them. The audio recordings are of interactions between the parties which the landlord characterizes as hostile, aggressive and anxiety-inducing.

The tenants dispute the landlord's characterization of their conduct and submits that the landlord has ulterior motives based on non payment of rent. The tenants say that they have been cordial, professional and good mannered to both the landlord and all neighbors during the course of this tenancy. The tenant submitted into evidence additional recordings of their interaction with the landlord as evidence that they have had a friendly relationship with the landlord. The tenant submits that the specific incidents cited by the landlord are either false, exaggerated or taken out of context. The

tenants also submitted anonymous emails and correspondence attesting to the good character of the tenants.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or have engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of other occupants or the landlord.

The parties greatly differ in their interpretation of their relationship and whether their interactions constitutes unreasonable disturbance or reasonable conduct during difficult times. The tenants dispute the landlord's version of facts and submit that they are either wholly fabricated or exaggerated beyond reasonable proportion. The tenants submit that any raised voices is in response to the ambient background noise and that instances where there have been hostile confrontations have been instigated or contributed by the other party. I do not find the tenants' interpretation to be supported in the evidentiary materials. I find that much of the landlord's submissions are supported in correspondence and statements from third parties. I find much of the submissions of the tenants to consist of suppositions, attributing motives to the landlord or third party witnesses and not be supported in the documentary materials.

I find that the landlord's evidence, consisting of multiple correspondence from third parties stating their interactions with the tenants, to be sufficient to show that the incidents occurred as described. I find that the conduct of the tenants, as described in the documentary materials, have caused unreasonable disturbance and interference. I find the description of the interactions found in the landlord's evidence to be reasonably interpreted to be an unreasonable disturbance. Raised voices, yelling and swearing are inherently aggressive and confrontational actions. The various written statements are uniform in describing the tenant's actions and demeanor as aggressive, angry and hostile. While the tenant refutes that the incidents occurred as stated I find the multiple

correspondence from a number of third parties to be sufficient to establish that the incidents occurred in the manner described by the landlord.

I am satisfied on a balance of probabilities that the conduct of the tenant has caused unreasonable disturbance and interference to the landlord and other occupants. Accordingly, I find that the landlord has shown on a balance that there is cause to end this tenancy and dismiss the tenants' application.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy. As stated above, I have found that the landlord has met their evidentiary onus and shown a basis for this tenancy to end.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue an Order enforceable 2 days after service.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant 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: October 6, 2020

Residential Tenancy Branch