



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC DRI FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated August 29, 2020 (1 Month Notice), to dispute a rent increase, and to recover the cost of the filing fee.

The tenants, an agent for the landlord GR (agent), and landlord MS (landlord) attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

The parties confirmed receiving the evidence from other party and having had the opportunity to review the evidence prior to the hearing. Given the above, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

At the outset of the hearing, the agent requested an adjournment due to the landlord referring to police file numbers. The agent's request was declined as the landlord did not introduce police file numbers during the hearing, and as a result, I find the request for adjournment was not relevant or necessary and that the time period to submit evidence had already elapsed.

Secondly, Rule 2.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two primary areas of dispute on the application,

the most urgent of which is the application to cancel the 1 Month Notice. I find that the dispute of a rent increase is not sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the 1 Month Notice and the tenants' application to recover the cost of the filing fee at this proceeding. The balance of the tenants' application is dismissed, with leave to re-apply.

Thirdly, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties confirmed that a verbal tenancy began on February 10, 2010. The parties also confirmed that a written tenancy agreement was never created as part of the tenancy. There is no dispute that the tenancy survived the sale of the property in August 2014, when the current landlords, MS and MS, purchased the property. MS testified that he and his father, MS, were both listed on the legal title of the property. The rental property is the basement suite of a single-family home.

The tenants testified that monthly rent was \$500.00 at the start of the tenancy and that in August 2014, the new landlords raised the monthly rent to \$550.00.

The tenants confirmed being served with the 1 Month Notice on the same date it was signed, August 29, 2020. The 1 Month Notice lists 3 causes, which are:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.
3. 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 tenants disputed the notice on September 3, 2020, which is within the 10-day timeline to dispute a 1 Month Notice under section 47 of the Act. The effective vacancy date on the 1 Month Notice is listed as September 30, 2020. There is no dispute that money was paid for October 2020. The agent testified that no receipt was provided to the tenants that stated “for use and occupancy” for the rent paid for October 2020. The landlord testified that money for October 2020 was paid in cash and no receipt was provided to the tenants, which I will address later in this decision.

The landlord described an incident on July 22, 2020, where the landlord writes:

On July 22, 2020 I observed [EK] smoking outside her unit on the property when smoking is not permitted inside or outside of the property. Second hand smoke was coming into our living space through the open window. I went outside to tell her she needs to stop and is not allowed to smoke here. Once telling her, I came back inside the house and then had to go back outside to throw out garbage. As I was returning, her boyfriend [RH] whom [EK] had moved in with her without the landlord's permission, started swearing at me. I told him he can't talk to me like that and that he is not my tenant and needs to find his own living place. He then opened the door and threatened me with a metal pipe raised above his head. I put my arm up to protect myself and then he grabbed my wrist. I pulled away and called 911. Police did attend and spoke to them. This is the second time [RH] has threatened me. Previous time he was also threatening me physically, and calling me racial slurs while intoxicated. Police were made aware of this. Both [EK] and [RH] start to drink early in the morning. [EK] has caused many disturbances and police have attended many many times. I have given her many chances to stop this.

Reproduced as written except for anonymizing names to protect privacy

The landlord clarified that the July 22, 2020 incident occurred between noon and 1:00 p.m. in the backyard of the rental property, and that RH said “there's the asshole” and stated “you were swearing at my old lady” in terms of accusing the landlord of swearing at EK's wife/partner. The landlord stated that RH was holding a short black pipe that looked like a heavy duty flashlight but was not a flashlight and that RH had it over his head in a threatening manner, then grabbed the landlord's wrist and that the landlord yanked his wrist back and called 911.

RH testified that it was the landlord who said “I am not scared of you” and came down the stairs to the rental unit and held the rental unit door open. RH described himself as 75 years old and testified that he had a remote control in his hand. RH stated that he had

to grab the hand of the landlord as RH was off balance and the landlord was trying to force their way in. The parties agreed that the police attended on July 22, 2020 and that the police did not lay any criminal charges. EK testified that they witnessed the landlord "F-Bombing" RH and claims the landlord did attempt to enter the rental unit.

The landlord presented many texts in evidence dated June 24, June 25, July 30, August 22 and some after the 1 Month Notice was issued on August 29, 2020.

The tenants' response was presented by the agent. The agent first explained that there was no written tenancy agreement, and as a result, there was no specific condition which stated, "no smoking". The agent also stated that the landlord had no corroborating evidence to support their claim that the tenant assaulted the landlord and that both parties provided different versions of that incident on July 22, 2020. The agent then stated that the texts submitted in evidence do not rise to the level of harassment for a tenancy since February 2010. The agent stated that some texts were at 12:48 and 12:56 in the morning but that the landlord worked graveyards, so would not have been disturbed.

The agent also presented a 10-digit file number as a previous decision, and the parties were advised that RTB file numbers do not contain 10 digits, so I afford the previous decision referred to by the agent, no weight.

Regarding the texts presented in evidence, most of the texts are from EK. For example, the June 24, 2020 text reads in part:

7:39 PM text from EK

What do you do with husband..Being lazy..!!

[3 laughing emojis]

It don't work that way [RH] is my husband..He'd been around . Before you guys came around.. .. Quit bitching.. Living off your ma and pa !!

Get your self together and find a place....rent.. Pay your way!!

At your age hanging at ma & ma's home.. Get real.. You're abusive..

To them..

7:42 PM text from EK

I'm not been mean to say.. You are their child.. But you are such an ass..

If you're my kid you go live on your own!!

8:09 PM response from MS

You've been told several times over the past 6 years not to contact me when you have been drinking.

8:10 PM response from MS

Don't swear at me again

8:11 PM response from MS

Last warning

8:21 PM text from EK

Why do you keep picking on me?? I don't bother you.. Or my husband.. What's your problem now?? Am I bothering you?? You don't hear nothing!! I keep the everything clean.. Get off our case.. You know what's good for you.. You bitch for no reason.. We are planning on leaving.. Good bye see if you can find nice ppl like us.. You use us old folks.. Sooo.. I tell you.. You'll be in our boots. If you're my kid.. I tell you to get a place.. My kid at 20.. Been on his own since.. Why are you still with ma & pa... Been abusive? Not cool!!

8:52 PM text from EK

You are very late for the rental's agreement.. Your father didn't do renter's contract[hearts icon]. Did you have a contract with your ex... Wife??

9:54 PM text from EK

I. Give up.. [3 smiling face emojis]

12:48 AM June 25, 2020 text from EK

[First name of landlord].. You're making our life and living very depressing. Why are you doing this? Are you out of your mind?? You been.. Jacking up the rent forever.. 100% I have my receipt.. When you done this and that.. .. Did you charge your wife for everything? Get real.. hope you drop off you na and oa's apron.. Go and live on your own like all my kids do.. Grow up.. [thumbs up emoji, laughing face emoji, flower emoji]

12:56 AM June 25, 2020 text from EK

This is not how life should be.. As the law goes.. We should enjoy and life.. Once you pay rent.. You have your space and happiness..

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

1 Month Notice to End Tenancy for Cause – As the tenants disputed the 1 Month Notice within the 10-day timeline by filing their application on September 3, 2020 and considering that the 1 Month Notice was dated August 29, 2020, the onus of proof reverts to the landlord to provide sufficient evidence to support at least one ground listed on the 1 Month Notice.

While I find that both parties provided conflicting versions of the incident on July 22, 2020, I afford significant weight to what I find was a threat made by EK in the text of June 24, 2020. In those text messages of June 24, 2020 to 12:56AM on June 25, 2020, EK writes in part:

8:21 PM text from EK

Why do you keep picking on me?? I don't bother you.. Or my husband.. What's your problem now?? Am I bothering you?? You don't hear nothing!! I keep the everything clean.. **Get off our case.. You k ow what's good for you..** You bitch for no reason.. We are planning on leaving.. Good bye see if you can find nice ppl like us.. You use us old folks.. Sooo.. I tell you.. You'll be in our boots. If you're my kid.. I tell you to get a place.. My kid at 20.. Been on his own since.. Why are you still with ma & pa... Been abusive? Not cool!!

[Emphasis added]

I find the text reads in part "Get off our case.. You know what's good for you" where the "n" is missing from the text and is more likely than not the intended word with the letter "n" missing. I find this to be a threat by the tenant to the landlord and that threats have no part in any tenancy. I note that the text was just under one month before the incident on July 22, 2020. I also disagree with the agent, where the agent stated that the texts submitted are reasonable at 12:48AM and 12:56AM due to the landlord working a graveyard shift. I find those texts do rise to the level of unreasonable disturbance of the landlord. I also find that the tenants telling the landlord to move out of their parents' home are also unreasonable and purposely vexatious and also rise to the level of unreasonable disturbance of the landlord by the tenants.

Therefore, based on the above, I find the landlord has met the burden of proof by proving that that the tenant has unreasonably disturbed the landlord. I also afford significant weight to the landlord's appropriate response to the text which was to remind the tenant

not to text when they have been drinking and where the landlord states they have reminded the tenant several times prior not to text when they have been drinking, which I note the tenants did not dispute during the hearing. Given the above, **I dismiss** the tenants' application in full, without leave to reapply. **I uphold** the landlord's 1 Month Notice as I find that it is valid.

As the tenants' application has been dismissed, I find it is not necessary to consider the second and third causes listed on the 1 Month Notice. Section 55 of the Act applies and states:

Order of possession for the landlord

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 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.**

[Emphasis added]

Given the above, and considering that I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective **October 31, 2020 at 1:00 p.m.** This date has been used as the effective vacancy date of September 30, 2020 has already passed. I find the landlord has not reinstated the tenancy by accepting money for October 2020 as the landlord is entitled not to endure a financial loss while waiting for a hearing where tenants have not vacated by the effective vacancy date listed on a 1 Month Notice. The tenants may be held liable for all costs associated with enforcing the order of possession.

Based on the above, I find the tenancy ended on September 30, 2020.

I do not grant the filing fee as the tenants' application has been dismissed without leave to reapply.

Conclusion

The tenant's application to cancel the 1 Month Notice has been dismissed without leave to reapply. I uphold the 1 Month Notice issued by the landlord.

The tenancy ended September 30, 2020.

The landlord is granted an order of possession effective October 31, 2020 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenants may be held liable for all costs associated with enforcing the order of possession.

This decision will be emailed to both parties as indicated during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 21, 2020

Residential Tenancy Branch