



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, RR, RP, OLC, FFT

Introduction

On October 23, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. T.M. and E.M. attended the hearing as agents for the Landlord. All parties in attendance provided a solemn affirmation.

Tenant S.C. advised that she served the Notice of Hearing package to the Landlord by email on or around October 27, 2020. T.M. confirmed that this package was received on October 30, 2020 by registered mail, however. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

S.C. also advised that she served the Landlord their evidence package by email on November 16, 2020. T.M. confirmed that the Landlord received this evidence package by email but advised that it should not be admissible as it was not served in accordance with the *Act*. As this evidence was served in a manner that did not comply with the *Act*, I have excluded this evidence and will not consider it when rendering this Decision.

T.M. advised that she served the Landlord’s evidence to the Tenants by registered mail on November 23, 2020 and by email on November 20, 2020. The Tenants confirmed that they received this evidence; however, they advised that this evidence should not be admissible as it was served late and not in a manner in accordance with the *Act*. As this

evidence was not served in accordance with the timeframe requirements pursuant to Rule 3.15 of the Rules of Procedure, and as it was also served in a manner that did not comply with the *Act*, this evidence will be excluded and not considered when rendering this Decision.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause and the request for more time, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to be granted more time to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2012. T.M. was unsure of how much rent was currently established at but stated that it was around \$1,200.00 per month. The Tenants advised that rent was \$1,140.00 per month. Both parties agreed that rent was due on the first day of each month though. As well, a security deposit of \$500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

T.M. advised that the Notice was served to the Tenants by posting it to their door on September 30, 2020. The reason the Notice was served was because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord." The effective end date of the tenancy on the Notice was listed as October 31, 2020.

S.C. advised that they received the Notice on September 30, 2020 and that she applied to dispute the Notice by registered mail; however, she stated that she was "not sure how to sent it to the Residential Tenancy Branch." She the stated that she realized that she "did it wrong" so she then applied to dispute the Notice online.

E.M. advised that she would not normally attend any Dispute Resolution hearings; however, this tenancy is especially problematic. She stated that a tenant that just recently moved out has had many problems living below the Tenants. She read from two emails from this tenant which outlined that she has made multiple complaints since February 2020 of noise that the Tenants would make at all hours of the night. Multiple men buzz her rental unit at all hours of the night looking for the Tenants. E.M. stated that the residents of the building do not feel safe due to the behaviours of the Tenants or their guests. These guests would do laundry in the building and would participate in loud parties.

She stated that one of the Tenants had an unauthorized pet in the rental unit, and once they finally got rid of that pet after being warned about it by the Landlord, they stole a dog from a homeless man, prompting the police to become involved. She also submitted that there was a folder of incriminating evidence sitting on a desk in the Landlord's office, and she stated that this mysteriously disappeared. She speculated that the Tenants or their guests stole these documents.

T.M. advised that the Tenants were given multiple written and verbal warnings about their conduct. She stated that they were served with a written warning on September 4, 2020 regarding the loud noises that they were making and requesting that they remove flowerpots from the ledge of their balcony as they posed a danger. She submitted that she still received noise complaints from other residents of the building after the Tenants received this warning. As well, when she conducted an inspection of the rental unit on September 17, 2020, the pots were still on the edge of the balcony railing. She stated that in January 2020, after the Tenants stole someone's dog, the owner's dog came into the building looking for it. This person pulled the fire alarm and the police attended the scene. In addition, she advised that the police attended the building this month as well because someone was fighting with S.C.

S.C. advised that it is their belief that the Landlord is attempting to renovict them, similar to how other residents of the building have been treated in the past. She refuted that they were making any loud noises or having any parties. She stated that the walls and floors are thin so she can easily hear noise from other units. She confirms that she has friends visit the rental unit and that one friend mistakenly went to a different unit while drunk. She confirmed that she received a warning letter on September 4, 2020 and that she was cognizant of not making any noise; however, the tenant below her still complained. Regarding the pots on their balcony railing, she stated that they have taken most of them down already.

Regarding the stolen dog, she stated that she did not hear the police at all, nor did she hear the fire alarm that was allegedly pulled. She denied stealing any dog. With respect to the allegation of fighting with another person in the building, she stated that she knocked on a neighbour's door because a guest of theirs was being disruptive. She advised that as the neighbour would not answer the door, she yelled through it telling this guest to leave the building. She stated that someone called the police and the Landlord assumed that the troublesome guests were hers, but they were friends of another rental unit. She submitted that she had no further action with these people as she had closed her door. The police talked to these other guests and subsequently left.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenants on September 30, 2020, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on September 30, 2020 by posting it to the Tenants' door and they confirmed receiving it that day. According to Section 47(4) of the *Act*, the Tenants have 10 days to dispute this Notice, and 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.” I find it important to note that this information is provided on the third page of the Notice as well.

As the Tenants received the Notice on September 30, 2020, the tenth day to dispute the Notice fell on Saturday October 10, 2020. As Monday October 12, 2020 was a statutory holiday, the Tenants must have made this Application by Tuesday October 13, 2020 at the latest. However, the undisputed evidence is that the Tenants made their Application on October 23, 2020. As the Tenants were late in making this Application, they requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenants were questioned if there were any exceptional circumstances that prevented them from disputing the Notice within the required time frame, S.C. cited her attempt to dispute the Notice by registered mail as the main reason the Notice was not disputed on time.

While I acknowledge that S.C. claims to have disputed this Notice by registered mail, given that she confirmed that she “did it wrong”, and given that she does not know where she sent this registered mail package, I am doubtful that this submission is valid or truthful. I find it important to note that there has been insufficient evidence submitted to support why either one of them could not have made this Application during the period with which they were required to dispute the Notice. As such, I am not satisfied that they have established that there were exceptional circumstances that prevented them from disputing the Notice on time.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenants’ testimony and reasons would constitute exceptional circumstances. However, I do not find that there is compelling or persuasive evidence, or a reasonable explanation for why either Tenant, or another person could not have disputed the Notice. As a result, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective **two 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: November 30, 2020

Residential Tenancy Branch