



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On September 24, 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, neither Tenant appeared at any point during the 19-minute hearing.

This hearing was scheduled to commence via teleconference at 9:30 AM on November 27, 2020.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 9:30 AM and monitored the teleconference until 9:49 AM. Only the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicants did not dial in and I also confirmed from the teleconference system that the only party who had called into this teleconference was the Landlord.

As the Tenants did not attend the hearing, I dismiss their Application without leave to reapply.

The Landlord advised that he did not serve his evidence to the Tenants. As such, this evidence will be excluded and will not be considered when rendering this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking 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 has issued a notice to end tenancy that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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 Landlord's 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.

The Landlord advised that the tenancy started on July 12, 2020, that rent was established at \$1,300.00 per month, and that it was due on the fifteenth day of each month. A security deposit of \$650.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that the Notice was served to the Tenants by hand on September 14, 2020. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The Notice indicated that the effective end date of the tenancy was October 15, 2020.

He advised that the Notice was served to the Tenants after he was contacted by the RCMP on September 8, 2020. The police informed him that they were called to attend the property and they determined that the Tenants had physically assaulted the upstairs tenants. As the Landlord had not submitted any documentary evidence to rely on to substantiate these allegations, he read from a text from the upstairs tenants which confirmed that they were assaulted by the Tenants. He advised that the upstairs tenants reported that one of their noses was broken due to the assault. As well, he read that Tenant S.B. stated that "I'll happily take an assault charge" and that Tenant B.Y. yelled "We'll do this every day, bro" in reference to the physical assault.

He confirmed that S.B. submitted a text message as documentary evidence where she acknowledged that both her and B.Y. physically assaulted the other tenants.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

As the Tenants did not attend the hearing, I have dismissed their Application to dispute this Notice in its entirety. However, pursuant to Section 55(1) of the *Act*, in order to grant the Landlord an Order of Possession, I must still consider the validity of the Notice.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) 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

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

With respect to the reason on the Notice, the Landlord provided insufficient documentary evidence to support his undisputed, solemnly affirmed testimony. However, based on the Tenants' text message evidence where they admit to physically assaulting the other tenants, I am satisfied that the ground for ending the tenancy under the reason that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant has been justified.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in

accordance with Section 89 of the *Act*, and as the Tenants' Application has been dismissed, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 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

I dismiss the Tenants' Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenants. Should the Tenants 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 27, 2020

Residential Tenancy Branch