



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated September 23, 2020; and to recover the \$100.00 cost of his Application filing fee.

The Tenants, an agent for the Tenants, J.C. ("Agent"), the Landlord, and a witness for the Landlord, J.B., ("Witness ") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or the Landlord.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing, and they confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

I note that the Tenants rent separate rooms in the same residential building, in which they share the bathroom and kitchen with other tenants; however, the Landlord indicated that they are together a lot of the time, causing the problems that led to this eviction.

During the hearing, the Tenant, C.D., repeatedly interrupted while other people were speaking. She was warned not to continue this behaviour or risk being removed from the hearing. This caused some delay of the hearing and frustration for other participants.

The Witness explained how she served the Tenants with documents for this hearing:

I gave them the papers in person. They were both in room 43 and both really out of it. They grabbed the papers, screamed at me threw the papers on the floor and slammed the door.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on February 1, 2019, with a monthly rent of \$700.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$350.00, and no pet damage deposit.

The Landlord said in the hearing, which was supported by his documentary evidence, that he served the One Month Notice on the Tenants in person on September 25, 2020. The One Month Notice has an effective vacancy date of October 31, 2020. The grounds checked off for issuing the One Month Notice were 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,
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord, and
- Put the Landlord's property at significant risk.

The Tenants or a person permitted on the residential property by the tenant has engaged in illegal activity that

- has caused or is likely to cause damage to the landlord's property,
- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The Landlord said:

The reason the eviction should stand is because they have been nothing but a hassle for the whole building. [C.D.] has screaming fits, they bar the doors - absolutely illegal by fire department – the unit is full of stuff that is illegal. Their smoke detectors are down all the time – also illegal. Good tenants left because can't take [the Tenants].

One gentleman in there – a quiet older guy - sleeps most of the time. He has to go to Walmart in the night, because they are in [the common bathroom] with their friends. We had to get the paramedics there when someone overdosed. The police are there all the time. [C.D. and S.W.] are making a total nightmare of this building. They signed an addendum saying that when they screw up, they will pack up and move on. These guys complain about the place, saying it's moldy, has bugs. . . but they just don't want to leave. They bring down the whole demeanor of the whole building. We've been battling these people for ever, doing it through legal matters.

Two days ago, they were in the hot water tank room, and I've told them a dozen times that it is a common, clean, and empty place. If they mess around in there it could start a fire. Two days ago – they had a pick axe in there. [C.D.] grabs it – and she's out of her head - and said 'you touch anything, and I will hit you with this'. I have it on video. It has to stop.

The toilet's broken. They have wood nailed onto the skylight; the peephole is covered. Room 42 – [S.W.'S] old room – was renovated beautifully. It had a new deadbolt that was drilled out, and there are people sleeping in there. They've kicked out every door in that place. The oven door has been trashed. There was a clothes line hanging in the hallway. They go into the laundry room and steal clothing out of dryers – caught that on video. I have everybody at the building

wanting them out. They make noise all night – they were up ‘til four in the morning last night.

The Tenants said:

Regarding the doors being barred, we bought proper things at [a national hardware chain] to put up against the door. We did that because our neighbour across the hall – they cut his ear off. The building was dangerous at the time. Two months after that – a person was beaten for about an hour; when he got a second, he went over the balcony, and he broke both legs and his back. The building was unsafe.

When asked about preventing other tenants from using the bathroom at night, the Tenants said: “There are four people in this unit and one bathroom. One regularly has two or three prostitute guests. If I’m in the bathroom, I’m using the bathroom.”

When asked about being noisy, the Tenant said: “I have no idea. I don’t make any noise ever. I don’t bang doors, play lousy music.”

The Tenant, S.W., said:

We don’t have any guests. The overdose? So many people overdose in other units. This person wasn’t even our guest. It’s the first time it happened there.

Analysis

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

I find that the Tenants were served with the One Month Notice in person on September 25, 2020.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, 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.

The Tenants were served with the One Month Notice in person on September 25, 2020; therefore, pursuant to section 47 of the Act, they had ten days (or until October 5, 2020)

to apply for dispute resolution to cancel the One Month Notice. As there is no evidence before me that the Tenants disputed the One Month Notice, I find that they are conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on October 31, 2020. As a result, the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. I find that the Tenants are overholding the rental unit, as the effective date has passed, and therefore, the Order of Possession will be **effective two days after service** on each Tenant.

I also find that the Landlord is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the Act, which he is authorized to retain from the Tenants' security deposits.

Conclusion

The Landlord is successful in his Application, as he provided sufficient evidence to support his position. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: January 11, 2021

Residential Tenancy Branch