



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, LRE

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both tenants attended the hearing. They were assisted by an agent ("**HP**"). The named landlord ("**CS**") attended the hearing, as did the property manager ("**NA**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Naming of Landlord

CS is the individual named as the respondent landlord. In preparation for the hearing, I reviewed the documents submitted into evidence by both parties. In these, I noted that CS was not named as landlord on either the tenancy agreement or the Notice (although she did sign the Notice as an agent). Both of these documents indicated that the landlord was a corporate entity (full name reproduced on the cover of this decision). I asked the parties about this, and CS indicated that she was the residence manager and not the landlord.

The tenant agreed and consented to my amending the application to properly identify the landlord.

As such, I order that the application be amended to remove CS as a respondent and substituted in her place the corporate landlord listed on the tenancy agreement, whose name is provided on the cover of this decision.

Preliminary Issue – Service of Documents

The tenants testified, and the landlord confirmed, that they served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord

testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) an order to suspend or set conditions on the landlord's right to enter the rental unit;
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 25, 2019. Monthly rent is \$1,300 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$650 which the landlord holds in trust for the tenants.

On October 26, 2020 the landlord personally served the Notice on the tenants.

The Notice indicates an effective move-out date of November 30, 2020.

The grounds to end the tenancy cited in that Notice were:

- 1) 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;
- 2) the 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;
 - jeopardize a lawful right or interest of another occupant or the landlord;and
- 3) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice provided additional details of the causes leading to its issuance:

On October 21st at 8:24 PM I received several noise complaints in regards to your unit. A police presence was necessary to deescalate the situation.

This issue has been recurring over the past few months to no avail. This is a major interference for the quiet enjoyment of the other tenants. This issue has

not been rectified and leaves us with no other option than to serve you with a 30 day notice of eviction.

In support of these allegations the landlords submitted three caution notices dated August 24, 2019, August 27, 2019, and October 21, 2020.

The August caution notices were issued due to the tenants smoking inside their apartment. These notices indicated that this action was a breach of a material term of the tenancy agreement. On the August 27, 2019 caution notice the landlord indicated that if such an infraction occurred again the landlord would issue a 30 day notice to end tenancy for cause.

At the hearing, the landlord did not allege that the tenants had been smoking in the rental unit since the August 27, 2019 caution notice was issued. The tenants testified that they now smoke on the patio and that this is acceptable to the landlord. The landlord did not deny this.

CS testified that the Notice was not issued for reasons connected to smoking, but rather due to noise complaints received about the tenants. The landlord also submitted an incident report from CS dated October 22, 2020 which provided further details about the disturbance on October 21, 2020. It stated:

There was a noise complaint from the next-door tenant to [the tenants]. I arrived at the building at 8:45 PM and called [tenant NC] to check in and she made me aware that she had called the police. [NC] was brought to the office for her safety while waiting for the police. The officer was unable to escort [tenant JU] out of the home for legal purposes. This incident was very disturbing for the neighbor next door and frightened their child. The other tenant's quiet enjoyment was hindered due to their ongoing altercation.

This incident was the second reported on October 21, 2020, there was a complaint made earlier that day in regards to yelling and profanity the night prior from a separate tenant.

NC testified that the incident described in the report was a domestic dispute between her and JU. She testified that in an effort to diffuse the situation she went into the rental unit bedroom and called the RCMP. JU remained in the main area of the rental unit, yelling. She testified that JU was intoxicated. JU testified that he was "so drunk that [he does] not remember the incident." NC testified that JU suffers from a medical ailment resulting from multiple concussions. She provided a note from JU's doctor corroborating this which also states that the use of alcohol can lead to an increase in JU's confusion.

NC testified that, the night of October 21, 2020, CS called her to come to the office, and that she did not think it was necessary. She denied that domestic dispute required NC to seek protection.

CS submitted a written complain letter from the tenant's next-door neighbour ("**JSC**") dated October 19, 2020. JSC wrote that on October 17 and 18, 2020 the tenants were arguing and playing music loudly after 10 pm. She also wrote that the argument on October 18, 2020 the argument continued after JU left the rental unit and was shouting at NC from outside.

JSC also made written complaints about noise caused by the tenants in February 2020. She also made a general complaint about the conduct of CS towards her and her son, alleging that CS was making false claims about her son's conduct. Both of these complaints were submitted into evidence.

NC testified that these complaints were baseless and the result of an acrimonious relationship between her and JSC. She testified the relationship soured when she caught JSC's son (who she claims is autistic) peeping into her bedroom while she slept.

CS argued that the disturbance on October 21, 2020 was just one disturbance in a series, which necessitated the landlord to issue the Notice. She also testified that, following the Notice being issued, the tenants continued to disturb other neighbours. The landlord submitted three further caution notices into evidence, dated October 28, 2020, December 3, 2020, and December 8, 2020.

On October 28, 2020, the tenants allegedly caused loud banging which shook the structure of the sounding units, starting at 10 pm and continuing until after midnight. NS submitted photos of JU's face taken on October 30, 2020, which showed bruising, and stated that, due to his concussions and his unsteadiness on his feet, he had fell down and hit his head on a table that abutted the wall between the rental unit and the neighbour who made the above-mentioned complaints.

On December 3, 2020, JU, while intoxicated, pounded on the door of a different neighbour's unit, for 8 minutes until she opened it, and then barged in. The police were called, and JU was removed from the building. JU acknowledged he did this and apologized profusely.

On December 8, 2020, a third neighbour complained to the landlord that he saw NC go up to window of a fourth neighbour's window and looked inside. The caution notice states that she then called JU over to look inside and that they were both "noticeably inebriated". The tenants denied doing this.

The tenants argued that the complaints of JSC should be discounted, as they resulted from a dispute between her and NC. They also submitted two letters from other neighbours about their character. In one letter, neighbour SH stated that he has "lived beside [the tenants] since October 1, 2020 and have no complaints. They have been fine."

In the second, neighbour MS wrote that:

The first month I moved into the premises (September aloud argument happened with swearing and yelling. I guess it was a couple's argument.

I met [and see] and we were chatting and she was very nice and friendly and very likeable.

After I settled in I noticed it was very quiet down below, except for the talking in loud voices [from JSC's unit]. I would always say hi from the balcony. They were very pleasant and quiet in the apartment with just a quick chit chat which was normal.

At the hearing, NC stated that the "couple's argument" MS referred to was one between herself and JU.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must prove it is more likely than not that the tenants acted as alleged on the Notice.

After having reviewed the documentary evidence and the witness statement, and considering the testimony of the parties, I find that the landlord has satisfied its evidentiary burden and proven that the tenant has unreasonably disturbed other occupants of the residential property.

I find that the tenants did so on October 17, 18, and 21, 2020 by engaging in arguments with one another and playing loud music after 10:00 pm that could be heard by JSC.

I accept the complaint letters written by JSC as accurate characterizations of the conduct of the tenants. I am not persuaded by the tenants' argument that these

complaints are baseless and the result of a dispute between NC and JSC. It is not disputed that there was a domestic dispute on October 21, 2020 which was significant enough that NC thought it necessary to call the police. Furthermore, one of the statements provided by the tenants in support of their claim references a “couple’s argument” between the tenants in September 2020 that she was disturbed by.

In light of the fact that there is corroboration of the allegation that the tenants have engaged in domestic disputes which could be heard by a neighbour other than JSC, I find it more likely than not that claims made in JSC’s written complaints are accurate. I also note that, while cannot rely on the incidents that occurred after the Notice was issued as grounds to end the tenancy, I can consider them when attempting to make a determination of credibility.

I find that the events described in the December 2020 caution notices, reported by occupants of the residential property other than JSC, when coupled with the disturbance of MS in September 2020, show a pattern of disruptive behavior exhibited by the tenants. As such, I find it more likely than not that the claims made by JSC regarding the disturbances caused by the tenants are also accurate, as they are in keeping with the pattern of conduct corroborated by others.

For this reason, I also give very little weight to statement of SH. I am satisfied that JSC’s account of events is accurate, and I unsure SH did not report them. It may be that he was not home the nights of October 17, 18, and 21, 2020 or that he slept through the events. I cannot say.

I find that the tenants unreasonably disturbed JSC on October 21, 2020. I find that this was not an isolated incident, and that, on at least two other occasions prior to the Notice being issued, the tenants disturbed JSC.

As such, I find that the Notice should be upheld.

Section 55 of the Act 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.

I find that the form of the Notice complies with section 52 of the Act.

As I have dismissed the tenants' application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective February 28, 2021 at 1:00 pm.

I have made the order of possession effective in one month in light of JU's medical condition and recognizing that it may have contributed to the disturbances. I am not unsympathetic to the tenants' situation; however such medical conditions do not excuse their conduct or give them permission to disturb their neighbours.

As the tenancy is ending, there is no need for me to make any order restricting the landlord's right to enter the rental unit. The landlord is reminded of its obligations under section 29 of the Act.

As the tenants have been unsuccessful in their application, I decline to order that the landlord reimburse them the filing fee.

Conclusion

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

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by February 28, 2021 at 1:00 pm.

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: January 28, 2021

Residential Tenancy Branch