



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted 8 documentary evidence files in person on January 21, 2021. Both parties also confirmed the landlord served the tenants with the submitted 7 documentary evidence files in person on March 18, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the conclusion of the hearing the tenants confirmed that he had incorrectly given his own email address for that of the landlord. The landlord provided his email address to correct this and to receive a copy of the decision. The Residential Tenancy Branch File shall be updated with this new information.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on January 15, 2021, the landlord served the tenants with the 1 Month Notice dated January 15, 2021 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2021 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause state:

Tenants have been repeatedly making excessive noise due to loud tv, talking, fighting and yelling which disturbs the peaceful enjoyment of neighbors.

[reproduced as written]

The tenants provided written details which states:

Since meeting with management on a previous date with regards to the same issue. We have spent nearly \$1000 dollars on the best soundproofing material we could buy for our application, to eliminate the transfer of our noise upstairs. Please see photos and letter in evidence section. Also we can't finance a move at this time as been off work 3 months during which mother died and had to use saved money to deal with her belongings and such, final expenses.

[reproduced as written]

The landlord stated that the complaints for excessive noise have been reported by other building occupants concerning the tenants. The landlord stated in 2019 the tenants were cautioned and issued a notice to end tenancy due to excessive noise. The landlord stated that due to the pandemic the landlord has delayed acting sooner, but that excessive noise continues despite the tenants efforts.

The tenant, R.D. stated that he confirms that there is periodic ongoing noise occurring despite his efforts to mitigate them. The tenant stated that he cannot dispute that noise is occurring. The tenant confirmed that a prior meeting did occur in which the tenant was warned about the excessive noise. The tenant stated that despite his best efforts excessive noise complaints continue to occur.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenants with the 1 month notice dated January 15, 2021 by posting it to the rental unit door.

Both the landlord and tenants confirmed that a previous warning had occurred in 2019 concerning excessive noise. The tenants provided undisputed evidence that despite his best efforts in mitigating the noise, the landlord is still receiving noise complaints due to his tenancy. As such, I find based upon the undisputed evidence of both parties that the 1 month notice dated January 15, 2021 is valid and the tenants application to cancel the 1 month notice is dismissed.

Pursuant to Section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date has now passed.

Conclusion

The tenants' application is dismissed without leave to reapply.
The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: April 16, 2021