



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: CNC

Introduction

The tenants seek an order cancelling a One Month Notice to End Tenancy For Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (“Act”).

The landlord and the tenant’s legal advocate attended the hearing on May 4, 2021 at 9:30 AM. The tenants did not attend the hearing, which ended at 9:59 AM. The advocate explained that he had not heard from his client (the tenant K.F.) since the application was made.

No issues of service were raised by the parties, the landlord was affirmed, and Rules 6.10 and 6.11 of the *Rules of Procedure*, under the Act, were addressed. It should be noted that while only one tenant’s name appeared on the application for dispute resolution, as the Notice and the written tenancy agreement include two tenants, I have amended the style of cause of this dispute to reflect that there are two tenants.

Issue

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on September 1, 2019 and monthly rent is \$650.00. A copy of the written tenancy agreement was in evidence. The rental unit is a basement suite that is described as “a large bachelor suite.”

On January 30, 2021, the landlord served the tenants with the Notice in person. A copy of the Notice was submitted into evidence, and several reasons for the Notice being issued are checked off on page two.

The landlord provided a written submission which outlined the reasons that led to her issuing the Notice. I reproduce that written submission in full, below, as it essentially captures the oral testimony that the landlord also provided (reproduced as written, names redacted for privacy reasons, and some formatting added for clarity):

I [landlord's name] have over the time of a year and half have had to talk to [the tenants] several times about heavy foot traffic and allowing their homeless friends crash at the rental suite at 314 western. they moved in september 1/2019, the winter of 2019 they had allowed people to stay I had a talk with them and they seemed to have followed the rules at that time. I had the upstairs tenant complain several times about smelling drugs being smoked in the rental unit that was not pot. I spoke with [tenant] who had denied doing drugs or having any drugs and denied any of this ever occurring and i issued a 30 day eviction based on smoking drugs in the unit and allowing homeless people to stay, [tenant] denied any wrong doing but before the eviction was to commence upstairs chose to move for the safety of their family. [Tenant] and I had a talk in which she denied any wrong doing and said the upstairs tenants where angry because she had complained about their arguing and yelling. As i had not witnessed any of this and [tenant] had seemed to comply to not having people stay at the unit I allowed [tenants] to stay.

[Upstairs occupant] moved into upstairs unit April 2020. [Upstairs occupant] had stated [tenant] had company coming during the day and sometimes at night which made her uncomfortable so I spoke with [tenant] again and [upstairs occupant] said the traffic seemed to stop. I was contacted by [upstairs occupant] in August of 2020 to let me know that someone known to [tenant] had overdosed and died in the basement suite at [address of rental unit].

Again I spoke with [tenant] who denied any drug use in her home or any drug use on her behalf, I explained to her again that this seems to be a on going problem and needs to stop now [upstairs occupant] was kind enough to say as long as all the drugs and traffic stopped she was ok with them staying aslong as the behaviour stopped as she did not want to see them homeless. everything was going really good no problems till the weather started to get cold in november and [tenant] started allowing her homeless friends to crash at the rental again. I

went to the residence at the beginning of december and spoke to [tenant] and [tenant] again that this was not allowed, [tenant's] housing worker [name redacted] also explained to [tenant] and [tenant] that this had to stop or they would be evicted.

This time after the talk [tenant] did not change but actually the problem got worse. She was allowing homeless people to stay at the rental several times i would knock on the door and strangers would answer the door in pygamas half asleep as i had woken them up and would go wake up [tenant] to come to the door in early January 2021, I told [tenant] to get everyone out of the rental and to not come back as the suite was not a flop house for homeless people and the constant foot traffic was to stop.

i had parked and sat outside the residence myself and would watch as several people would enter the property remaining for about 5 minutes then would leave and head down the alley. on one occasion I witnessed about 8pm a black or dark blue newer chevy/GMC pickup pull into the driveway someone came out of the rental unit and grabbed a box from the passenger in the truck. Within 10-15 minutes of this drop off there was no less then 8 people who came within a 20 minute period of time went to the suite banged on the door someone opened the door the visitor didnt go in the suite would be there about 2-3 minutes and would leave down the alley.

I have recieved several complaints from upstairs about constant banging on the door all hours of the night yelling screaming doors slamming and people still using the suite as a flop house. I have lost one good tenant who had lived there for 2 years before [tenant] moved in I do not want to keep losing tenants because of [tenant's] behaviour and not following the rules.

The landlord submitted into evidence an anonymous letter from a concerned neighbour. As the author of this letter cannot be corroborated or confirmed, I cannot consider it. However, the landlord also submitted into evidence a letter from the upstairs occupant. This letter was purportedly drafted in early April and largely reflects the ongoing noise and other disturbances that the tenants are creating.

The tenant's legal advocate was, admittedly, at a bit of a disadvantage, as his client failed to communicate with him since their initial meeting. Nevertheless, he asked the landlord a few questions, mainly about the housing program and some support services.

It should be noted that, while the landlord served copies of her evidence to the tenant (K.F.) in person on April 23, the tenant neglected to forward these to her advocate. The landlord was kind enough to read the content of the letter from the upstairs occupant into evidence. This letter largely reflects the issues referred to in the landlord's letter.

Analysis

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.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

There are six grounds on which the Notice was issued. I will only address one, namely, that the tenant or a person permitted on the property by the tenant has "significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property" (section 47(1)(d)(i) of the Act).

The landlord's oral evidence, and the letter from the upstairs tenant, persuades me that the tenants have both significantly interfered with and unreasonably disturbed another occupant. The repeated and ongoing incidences of "heavy foot traffic" and "drugs being smoked in the rental unit" establish the significant interference and disturbances. Moreover, the activity of constant coming and going – which strongly suggests that drug trafficking is occurring – provides additional credence to the grounds on which the Notice was issued.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving at least ground on which the Notice was based. Having established this ground, I need not consider the remaining five grounds. Accordingly, I dismiss the tenant's application to cancel the Notice.

At this point, I must note that section 55 of the Act requires that when a tenant applies 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's notice to end tenancy complies with the Act.

Section 55(1) of the Act states that

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.

Here, having reviewed the Notice, I find that it complies with section 52 of the Act. Further, having dismissed the tenants' application and having upheld the landlord's Notice, I therefore grant the landlord an order of possession of the rental unit.

A copy of the order of possession is issued in conjunction with this Decision, to the landlord. The landlord must serve a copy of the order of possession on the tenants.

Conclusion

I hereby dismiss the tenants' application, without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenants and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 4, 2021

Residential Tenancy Branch