



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The hearing exceeded the allotted 60 minutes, but was extended a further 14 minutes to allow both parties the full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlords duly served with the tenants' application. All parties confirmed receipt of each other's evidentiary materials.

The tenants confirmed receipt of the 1 Month Notice to End Tenancy dated April 14, 2021. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recovery of the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on July 1, 2014 with monthly rent currently set at \$1,070.00 payable on the first of each month. The landlords collected, and still hold, a security deposit in the amount of \$475.00 for this tenancy.

The landlords issued the notice to end tenancy providing the following grounds:

1. The tenants have allowed an unreasonable number of occupants in a rental unit;
2. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords;
3. The tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlords;

The landlords served the tenants with the 1 Month Notice after a specific incident that took place on April 12, 2021 involving the tenants and their guests. The landlords provided the following background and history for why the landlords had decided to issue the 1 Month Notice, and are seeking an end of this tenancy.

It is undisputed by both parties that the tenant GK originally shared the 3 bedroom rental unit with co-tenant JV until JV moved out on or about July 1, 2020. JV now resides in a different unit in the same complex. The landlords discovered that GK's adult son, TK, had moved in sometime after JV had moved out, without filling out an application form, or signing a new tenancy agreement. TK continues to reside in the rental unit with GK.

The landlords provided a statement detailing the incident that took place between 2:00 p.m. and 4:10 p.m. on April 12, 2021, and the reasons for why they feel that this tenancy must end. The landlords also provided twelve statements from tenants who reside in the complex. Two of the tenants testified as witnesses in the hearing. The landlord LW testified that she was attending an online class from her home when she was significantly disturbed by the tenants and their guests. The landlord submits that one of these guests included a roommate of another tenant residing in the complex, who is a “well-known hard drug user”, and another party, JF, who was “banned for life from the apartment property”. The landlord described the incident as a “drunken gathering” which also involved other tenants in the complex, LR and RW. The landlords feel that the incident that took place on April 12, 2021, should be sufficient reason to end this tenancy, but state that there has been a history of “friendly warnings, a few phone calls, knocks on their door, and post it notes begging for the Tenant to stop the yelling, screaming, fighting, loud music, swearing and especially not urinating in our parking lots”. The landlords submit that this behaviour has been ongoing for years, as evidenced by the statements provided for this hearing.

The landlord, in their statement, state that both tenants are alcoholics, and their music, swearing, fighting, and arguing could be heard on April 12, 2021, which began in the apartment fire lane, and could be heard by the landlords from their unit. The landlord LW states that she was verbally assaulted, and was shocked as it was the “worst verbal assault of my 59.5 years”. The landlord was also concerned that young children were returning home from school at that time.

The landlord returned to her unit, and states that she could still hear the yelling, swearing, and arguing even with the windows and doors closed, two buildings away. The landlord then received a phone call from another tenant who resided on the same floor as the tenants requesting that the police be called to deal with the escalating disturbance. The landlord provided the police file number for the incident.

The landlord states that the majority of statements are from long-time tenants who have witnessed the same kind of disturbance from the tenants for some time. The landlord testified in the hearing that they had a duty to ensure the quiet enjoyment of all the tenants and occupants in the 34 unit, 3 building apartment building complex.

Two tenants, CP and AT, who had provided statements, also testified in the hearing. CP testified he was a long-term tenant, and resides in the same section as the landlords. CP testified that he was able to hear the screaming, yelling, and swearing by the tenants. In CP’s statement, he states that he is familiar with the tenants, and that they

had “loud vulgar parties for years, which have been hard not to hear”. CP states that “this includes times with or without (TK) living at the unit”.

AT testified in the hearing that she resides on the third floor, which is on the same side of the fire lane as the tenants’ rental unit. AT testified that the occupants of her rental unit have been subject to many years of disturbance from the tenants, which involved “loud abusive parties”, “yelling and very offensive language” and late night screaming. AT expressed concern that this took place when her two young children were present.

The landlord expressed concern over the confrontation that took place on April 12, 2021, as well as the past behaviour of the tenants, and denies that the dispute is over the refusal of the tenants to sign a new tenancy agreement. The landlords note that many of the letters submitted were from tenants who resided in units in close proximity to the tenants, and have endured the ongoing disturbance for a long period of time.

The tenants dispute that this tenancy should end on the grounds provided on the 1 Month Notice. The tenants’ advocate points out that numerous tenants have provided statements disputing the allegations of the landlord that the tenants regularly disrupt the quiet enjoyment of other tenants in the complex. One of these parties, LR, testified as a witness in the hearing. LR testified in the hearing that she also resides in the building, and that the tenants are good to her, and take her shopping as she is 83 years old, and does not drive. LR testified that the landlord LW had yelled at GK on April 12, 2021, and called him a “shithead”, and that the landlord was the confrontational party.

The tenants’ advocate notes that there is evidence to support that the landlords’ behaviour supports an intent to discriminate against the tenants on grounds prohibited under the Human Rights Code of BC. The tenants provided a copy of a sticky note signed by the landlord that states “we have been getting complaints about noisy/partying. Please stop! Stop yelling/very loud talking. Most people work & don’t sit around all day”. The landlords dispute this claim, stating that many tenants in the building drink, and none have been served notices to end tenancy.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. It is clear from the testimony and evidence that the relationship between both parties have deteriorated significantly. Despite this deterioration of the relationship between both parties, the landlords still have the burden of proving that they have cause to end this tenancy on the grounds provided on the 1 Month Notice, as allowed by section 47 of the *Act*.

The first reason for ending the tenancy provided on the 1 Month Notice is that “the tenants have allowed an unreasonable number of occupants in a rental unit.”. Although it is undisputed that the tenants had never filled out an application form, or signed a new tenancy agreement to include GK’s son, TK, I find that the number of occupants in the rental unit have not changed from the original number when the tenancy began. I note that the landlords also confirmed that the rental unit contains three bedrooms. Although the landlords may not approve of the change in occupants, and of the manner by which the tenants have allowed the additional occupant TK to reside there, I find that the landlords have not provided sufficient evidence to support how that the number of occupants could be considered unreasonable, especially when the total number of occupants is the same as the number at the beginning of the tenancy. In this case, I am not satisfied that the landlords have established that this tenancy should end on the grounds that the tenants have allowed an unreasonable number of occupants in the rental unit.

I must now consider whether the landlords had grounds to end the tenancy for the following other two reasons:

1. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlords;
2. The tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlords.

In review of the evidence and testimony before me, I find that the landlords were able to obtain numerous statements from tenants. Although all twelve statements include positive references for the landlords, which I do not doubt to be honest and made in good faith, the landlords still bear the burden of proof to support that this tenancy should end on the grounds provided on the 1 Month Notice.

I find that the evidence before me supports that the tenants and their guest were engaged in behaviour on April 12, 2021 that disturbed the landlords, and other tenants

in the building. However, I do not find this singular incident is significant or unreasonable enough to justify the ending of this tenancy, especially in light of the fact that the tenants have engaged in similar behaviour for some time without receiving any formal written warnings that this behaviour was unacceptable, and that any future breaches could possibly result in the end of this tenancy.

I find that the statements submitted by the landlords describe “many years of partying”, which have been described as “loud” and “vulgar”. Despite these statements and references, I find that the landlords have not provided a log or summary of any incidents prior to the one on April 12, 2021, nor have the landlords provided copies of any formal warning letters issued in relation to these past incidents. The landlords state that they have issued “friendly warnings, a few phone calls, knocks on their door, and post it notes begging for the Tenant to stop the yelling, screaming, fighting, loud music, swearing and especially not urinating in our parking lots”. Although the landlords may have had good intentions, I do not find that these actions relieve the landlords of their responsibility to support their claims, or the claims of other tenants, whether this be detailed documentation of each incident, or copies of formal written warnings to the tenants. Although the tenant GK has resided in the rental unit for seven years, and although there are references to disturbances that date back several years, I find that the landlords have failed to provide specific details of any incidents other than the one that took place on April 12, 2021. As stated above, I do not find that that this singular incident to be sufficient grounds for ending this tenancy, especially in light of the fact that the tenants have been engaging in similar actions for some time without any formal warnings that this is a problem that could result in the end of the tenancy if the actions and behaviours were not corrected.

The tenants have provided letters in their support, and although the landlords did challenge the credibility of these witnesses considering their background and relationship with the tenants, the onus still falls on the landlords and not the tenants to support that this tenancy should end on the grounds provided on the 1 Month Notice. In light of the evidence before me, I find that the evidence provided by the landlords fall short. I am not satisfied that the landlords had provided sufficient evidence to support that the tenants or a person permitted on the property by the tenants have seriously jeopardized the health or safety or lawful right of another occupant or the landlords. Although I appreciate the landlords’ concerns about the provincial health orders in place at the time, enforcement of orders other than ones that apply under the *Residential Tenancy Act* are not within the jurisdiction of the RTB. That being said, I am not satisfied that the landlords’ evidence is sufficient to demonstrate that the health or safety, or lawful right of another occupant or the landlords have been jeopardized.

Although I appreciate the fact that the landlords have expressed concern about their ability to continue acting in their current capacity if this tenancy were to continue, in light of the conflicting testimony between both parties, I am not satisfied that the landlords have established on a balance of probabilities that the conflict arises solely from the tenants’ actions and behaviour, rather than due to interpersonal difference between the

parties. I note the reference to the tenants' lack of employment and use of personal time in the handwritten note from LW to the tenants dated October 1, 2020: "Most people work & don't sit around all day". Despite the preceding reference to complaints received about noise and partying, I find that the statement made reflects the landlords' personal beliefs and opinion of the tenants and their behavior, and does not constitute a proper warning to the tenants of any possible breaches of their tenancy agreement and the *Act*. I find that the statements submitted in evidence also contain reference to sentiments about the tenants' behaviour such as "I don't speak DRUNK", rather than reference specific incidents that support the landlords' application.

For the reasons cited above, I find that the landlords have failed to demonstrate to the extent required that this tenancy should end for the reasons provided on the 1 Month Notice, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice. The 1 Month Notice dated April 14, 2021 is hereby cancelled, and the tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

I allow the tenants' application to recover the filing fee for this application.

Conclusion

I allow the tenants' application. The landlords' 1 Month Notice to End the Tenancy dated April 14, 2021 is cancelled. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: July 12, 2021

Residential Tenancy Branch