



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT

Introduction

On April 22, 2021, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel One Month Notice to End Tenancy for Cause (the Notice) issued April 14, 2021, and for a monetary order for compensation for monetary loss or other money owed. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice to end tenancy, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. Both parties were also advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy and for a monetary order. I find that this other issue contained in this application is not related to the Tenants' request to cancel the Notice. As this other matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenants' claim for a monetary order for compensation for monetary loss or other money owed.

I will proceed with this hearing on the Tenants' claim to cancel the Notice.

Issues to be Decided

- Should the Notice issued on April 14, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

While I have reviewed all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on February 1, 2016, with the initial rent in the amount of \$800.00 per month, due on the first day of each month. The tenancy agreement also recorded that at the outset of the tenancy, the Tenants paid a \$400.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the Landlord served the Notice to end tenancy to the Tenants on April 14, 2021, by posting the Notice to the front door of the rental unit. Both the Landlord and the Tenants submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice are as follows:

- *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*
 - *Put the Landlord's property at significant risk.*
- *Tenant or 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 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 Notice states that the Tenants must move out of the rental unit by May 16, 2021. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenants have a history of verbal and physical intimidation towards the Landlord's Agent, who also resides on the rental property, and other renters living on the rental property. The Landlord testified that they had issued five Caution Notices over that last year to the Tenants: the first on January 20, 2021, two on July 20, 2020, and one on August 4, 2020, and March 3, 2021. The Landlord submitted five copies of Caution Notices into documentary evidence

The Landlord testified that due to the history of intimidation towards the Landlord's Agent and other renters, the Landlord had requested that the Tenants no longer attempt to communicate in person, regarding their complaints, to the Landlord's Agent or the other renters living on the rental property.

The Landlord testified that it was finally decided to issue the Notice to End Tenancy due to an incident that took place on April 5, 2021. The Landlord testified that on this day, one of the Tenants left them two threatening messages, one in which they threatened to

physically harm the Landlord's Agent with the baseball bat. Additionally, the Landlord testified that the same Tenant who had left the verbal threat attended the rental property office and that during this visit, the Tenant continued in their verbal harassment of the Agent and had refused to leave when asked, physically preventing the Agent from closing the door. The Landlord testified that the police were called to the rental property due to this incident. The Landlord submitted an audio recording of one of the Tenant's voice mails to the Landlord's Agent into documentary evidence.

The Tenants agreed that they did leave the voice messages, that they did threaten the Landlord's Agent with physical harm in those messages and that the Police did attend their rental unit due to these messages. The Tenants testified that they were frustrated due to the Landlord's refusal to address their complaints of excessive noise coming from the renter living above them. The Tenants testified that they had made numerous written and verbal complaints to the Landlord's Agent and that instead of dealing with their complaints, they believe that the Agent has allowed the noise to continue in an attempt to force them out. The Tenants agreed that the threat was not the correct way to handle the situation but that it only happened due to extreme frustration. The Tenants requested that the Notice to end their tenancy be cancelled.

When asked, the Tenants testified that they had made no attempt to take their dispute with the Landlord, regarding noise, to the Residential Tenancy Branch (the "RTB") before the incident of April 5, 2021.

The Landlord's agent testified that due to the Tenants' actions, they do not feel safe living and working on the rental property, and they are requesting that their Notice to end this tenancy be enforced.

When asked to provide details as to the other two reasons to end the tenancy, as indicated on the Notice, the Landlord responded that the disturbance of April 5, 2021, was the main reason for the Notice; requesting that a decision on the validity of the Notice be considered on this reason alone.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants were deemed to have received the Notice three days after it was posted to the front door of the rental unit, on April 17, 2021, pursuant to the deeming provisions stipulated in section 90 of the *Act*.

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause, a tenant must, within 10 days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice; section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

Pursuant to section 47, I find the Tenants had until April 27, 2021, to file their application to dispute this Notice. I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed their application on April 22, 2021, within the legislated timeline.

I accept the agreed-upon testimony of these parties, supported by the audio recording, that one of the Tenants to this tenancy got into a dispute with the Landlord's Agent on April 5, 2021, and that during this dispute the Tenant threatened physical harm to the Agent. I also accept that local police had to attend the rental property due to this incident.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case, and I find the actions and behaviour of the Tenants, detailed in the sworn testimony, and demonstrated in the audio recording submitted into evidence, does demonstrate an unreasonable disturbance.

For the reason stated above, I find that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenants' application to cancel the Notice issued April 14, 2021.

Section 55(1) 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 have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service of this Order on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

Conclusion

The Tenants' application to cancel the Notice, issued April 14, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 4, 2021

Residential Tenancy Branch