Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

The tenants seek an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47(4) of the *Residential Tenancy Act* ("Act") and they seek an order pursuant to section 62 of the Act. They also seek recovery of the cost of the application filing fee under section 72 of the Act.

All parties, including an advocate for the tenants, attended the hearing on September 14, 2021. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained. The style of cause has been amended to include the name of both tenants as they appear on the Notice.

Preliminary Matter – Severing Unrelated Issue

Rule 2.3 of the *Rules of Procedure* states that "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."

Having reviewed the tenants' application I find that the plea for relief under section 62 of the Act is unrelated to the central and most important issue: will this tenancy end? As such, the claim for relief under section 62 of the Act is dismissed, with leave to reapply. However, as explained, the issue of noise will still be considered as it relates to the central matter.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, are the landlords entitled to an order of possession of the rental unit?
3. Are the tenants entitled to recover the cost of the application filing fee?

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 issues of this dispute, and to explain the decision, is reproduced below.

The landlords provided testimony and submitted documentary evidence, along with a written submission, in respect of the details of the various issues resulting in the Notice being issued. For brevity and clarity, I will paraphrase (and copy) from the landlords' written submission, in respect of the events leading up to the issuing of the Notice. The landlord (M.B.) provided an oral summary of these events as well, during the hearing.

The tenants moved into the rental unit on January 1, 2020. The landlords purchased the property (in which the rental unit is located) on September 30, 2020. The rental unit is a bachelor suite which is in the basement of a five-bedroom home, and it is separate from the remainder of the house. In October 2020 the remainder of the home was rented to a separate group of tenants (referred to by the landlords as the "residents.").

Steps were taken by the landlords to seal off and sound insulate two doors separating the bachelor suite from the rest of the house. However, these steps may not have prevented what happened next.

Between October to the end of December 2020, the residents verbally complained to the landlords that the tenants were frequently engaged in loud arguments and banging things around in the unit. These disturbances could last up to a couple of hours. At this point, the residents were content to try and resolve the noise issues directly with the tenants, albeit to no avail.

The noise issue did not improve, and the tenants continued to engage in what they described as "argumentative yelling". In late December 2020 the residents requested that the landlords address the issue with the tenants. And then, on December 23, 2020, the landlord (M.B.) had a discussion with the tenant (F.P.). The tenant apologized. He explained that he and the other tenant were going through a stressful time and that they would improve the situation.

During the Christmas period, there was an issue with the perimeter drain and the landlords were on site on a number of occasions. On two occasions, the landlord M.B. witnessed loud arguments between the tenants.

The situation still did not improve, and the landlords received a written letter of complaint from the residents on January 26, 2021. On February 1, 2021, the landlords sent a written warning letter to the tenants requesting that the noise cease forthwith.

The tenants responded on February 7, 2021. They acknowledged their argumentative yelling and indicated that they would improve the situation. In response to the tenants' letter of February 7, 2021, the landlords provided a further written warning on February 11, 2021.

On March 16, 2021, the noise issues continued. The tenants were provided with a further written warning detailing 14 incidents between January 27 and March 7, 2021. The tenants did not respond to this warning.

On March 30, 2021, the tenants were issued with a final warning detailing 10 different days in which argumentative yelling had occurred. Since the letter of March 30, 2020, tenant L.Z. confronted the residents on two separate occasions. The first being in the second week of April and the most recent being April 16, 2021. The residents have expressed concern and described her conduct as being aggressive.

Throughout the period between January 1 and April 26, 2021, the tenants have, the landlords argue, repeatedly interfered with the residents' quiet enjoyment of the property. And thus, on April 27, the landlords issued the Notice.

The landlords summarized their case by submitted that they made multiple efforts to resolve the situation directly with the tenants. Tendered into evidence by the landlords are copies of correspondence sent to the tenants addressing the various noise complaints. Efforts made by the landlords included addressing any concerns in which they have raised and providing them with a significant opportunity to improve their conduct. Their conduct has not improved and has in fact escalated, according to the landlords. In closing, the landlords reiterated that, certainly, sound will travel. However, shouting and yelling is not a normal use of a property.

Submitted into evidence are copies of emails and correspondence authored by one or more of the five residents. Some of the correspondence is undated, while others are dated March 29, April 29, and June 27, 2021. None of the upstairs residents testified at the hearing.

Under direct examination the tenant L.Z. testified that there is a significant noise transfer within the property. One “can hear quiet conversations” in other parts of the house.

They hear the residents upstairs, and they remarked that the soundproofing does not help. In response to tenants' advocate asking the tenant about the alleged screaming fights, the tenant stated, "this is a tall tale, an exaggeration." Much was made by the tenant about the upstairs tenants being young ("in their twenties") female students.

In response to advocate's questions concerning the purported aggression, the tenant testified that they are not aggressive, but rather, are "assertive and direct [and] they [the residents] need to learn the difference between 'aggressive' and 'assertive'."

The tenants' advocate then argued that the noise being complained of not significant. The soundproofing is poor, because even the sound of "normal" arguments will travel. In short, the upstairs residents have "overstated the problem." Further, in respect of the allegations concerning aggressive confrontation, the advocate argued that it is the nature of communal living wherein assertive conversations are sometimes needed. The advocate also spoke of the age, occupation, and gender of the tenants.

Landlord M.B. cross-examined the tenant about various matters; I will not reproduce evidence from the cross-examination as I did not find it particularly relevant to the issue of this dispute (that is, whether there is a ground on which the Notice was issued).

The landlord J.E. was direct examined by the landlord M.B. Landlord J.E. testified about an interaction that they had with the tenant L.Z. The tenant was "angry, confrontational, and in my face." The tenant "kept talking over me" and the landlord eventually had to turn her back on the tenant and leave.

Analysis

Where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

The Notice (a copy of which is in evidence) was served in-person on the tenants on April 27, 2021. On page two of the Notice, it is indicated that the ground on which it was issued is 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.

This language reflects subsections 47(1) and 47(1)(d)(i) of the Act which states that

> A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [. . .] the tenant or a person permitted on the residential

> property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property [. . .]

At the bottom of page two the "Details of Cause(s)" section of the Notice includes the following information recorded by the landlords:

> The Tenants have repeatedly engaged in conduct which has disturbed the neighboring tenant's quiet enjoyment of the property contrary to s. 28 Residential Tenancy Act. The Tenants have acknowledged engaging in "argumentative yelling". They have received one verbal warning, three written warnings, and a final warning, to stop this conduct. This conduct has continued and recently escalated to confronting the other Tenants. [. . .]

I start by acknowledging that most residential homes built in the 1970s, such as the one in this dispute, are not particularly effective at dampening the transfer of sounds between rooms and floors. Indeed, by the nature of the noise complaints made by both the residents (that is, the "other occupants" as I shall now refer to them) and the tenants, the transfer of noise is very much a problem in this property.

However, the nature of the complaints made by the other occupants is not that of the tenants' ordinary daily living. Rather, the complaints are about the tenants' argumentative yelling. The numerous written and verbal complaints made by the other occupants to the landlord cover a span of six months. The detailed information contained in the various written complaints (including the "updated formal complaint" document 000089 in the landlords' evidence) reflect a frequency and intensity of noise caused by the tenants that cannot, under any circumstances or within any type of residential property, be considered ordinary and acceptable noise. The other occupants write (excerpt from document 000092) as follows:

> From the day we moved in we have heard frequent screaming fights that have gone on for hours also included throwing of objects and slamming doors from very early to late hours, which greatly impacted our ability to focus on school and jobs due to the noise and sleep deprivation. We did not want to complain and tried talking to them. Nothing changed.

This letter mentions that the other occupants were disturbed by the tenants' noise. That the tenants chose to loudly argue during the daytime does not invalidate the disturbing nature of those arguments. That the tenants early earlier acknowledged causing

disturbances is, I find, persuasive evidence that the tenants were aware of the issue but chose not to remedy the problem.

The landlords took reasonable steps to resolve the ongoing issue and issued more than enough warnings that the conduct of the tenants must cease. However, the tenants appeared to have been unable or unwilling to make any such changes to their behavior. To be frank, the landlords were more than patient with the tenants, and it is rather surprising that a notice to end tenancy was not issued earlier.

As an aside, while there is the secondary issue of the tenants' alleged "aggressiveness" when interacting with the other occupants, I will not delve further into this. Regardless of whether the other residents and the tenants are definitionally divergent on what constitutes "assertive" versus "aggressive" interactions, it is not difficult to accept the landlords' evidence that any reasonable person would be unreasonably disturbed by the tenants' "loud arguments," "loud screaming," "yelling and banging of the walls," "banging objects," "yelling and slamming of the doors" and so forth.

In direct examination the tenant disputed the complaints about the screaming fights, remarking that "this is a tall tale, an exaggeration." I am not persuaded by the tenant's testimony, and I found her to be more interested in placing blame for the noise issues on (1) the lack of adequate soundproofing and (2) the residents' youth, inexperience, and propensity to be noisy. Quite simply, after carefully and thoughtfully considering the evidence of the landlords with that of the tenants, I find that both the preponderance and weight of the landlords' evidence to be significantly more persuasive than that of the tenants' evidence.

Thus, in taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find that the landlords have discharged the onus of proving the ground on which the Notice was issued.

Given the above, the tenants' application for an order cancelling the Notice, and their claim for recovery of the cost of the filing fee, is dismissed without leave to reapply.

Having dismissed the tenants' application, I turn now to section 55(1) of the Act:

> 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.

Having reviewed the Notice I find that it complies with section 52 of the Act. Thus, as the tenants' application is dismissed, I grant the landlords an order of possession pursuant to section 55(1) of the Act.

Conclusion

I HEREBY:

1. dismiss the tenants' application, without leave to reapply, and

2. grant the landlords an order of possession, which must be served on the tenants and which is effective on September 30, 2021at 1:00 PM. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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

Dated: September 15, 2021

Residential Tenancy Branch