



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and the landlord was represented by his son. Both tenants and the landlord's son gave affirmed testimony however the landlord's son referred to the landlord for answering questions in another language. The parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, particularly with respect to the reasons for issuing it?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on July 1, 2019 and reverted to a month-to-month tenancy after June 30, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$2,500.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the upper level of a house, and the lower level is also rented. The landlord does not reside

on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that sometime in May, 2021 the tenants were served with a One Month Notice to End Tenancy for Cause by taping to the wall of the rental unit and another copy was placed in the mailbox. A copy of the Notice has been provided for this hearing and it is dated May 20, 2021 and contains an effective date of vacancy of June 30, 2021. The reasons for issuing it state:

- 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;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The landlord's agent testified that neighbours advised that the tenant husband climbed over the fence due to loud music and he was annoyed. He yelled at the neighbour and physically harassed him, or pushed him. Police were called who just recorded what happened. The neighbour called the landlord and that's what the landlord was told.

With respect to illegal activity, the landlord's agent firstly said that the tenant threatened the neighbour, but when questioned about what the threat was, the landlord's agent testified that there was no threat. However, in the past, the tenant has sprayed the neighbour's dog with water. The landlord has also received noise complaints and complaints of the tenant throwing stuff over the fence.

When asked why the landlord didn't contact the tenants about any complaints, the landlord's agent testified that the landlord doesn't speak English and the landlord's agent wasn't around at the time.

A typewritten document has been provided for this hearing which sets out allegations on February 21, 2020, May 20, 2021 and July 24, 2021. Another typewritten document has also been provided, which speaks of the tenants throwing garbage on the neighbouring property and other allegations, but is not dated and none of the allegations are dated.

The first tenant (GZ) testified that the landlord has been trying to evict the tenants for awhile. A previous hearing was held wherein a similar notice to end the tenancy was cancelled, and a copy of the Decision has been provided for this hearing. It shows that the

hearing was held on March 23, 2021 and the Decision is also dated March 23, 2021. The landlord had given a notice to end the tenancy stating that the rental unit must be vacated to comply with a government order, but the Arbitrator found that the landlord had not provided sufficient evidence of grounds to evict, and the notice to end the tenancy was cancelled.

The tenant further testified that the landlord has made it clear that he wants the tenants to move out. Whenever the tenants complain about noise or other issues, the landlord tells the tenants to move out, and has never asked the tenants at any time if there are any issues.

The landlord speaks English well and has sent the tenants hundreds of text messages.

The neighbour that the landlord's agent has spoken about is not an occupant of the rental building. On May 20, 2021 at 7:30 a.m. the son of the neighbour was working out and woke up the tenants with loud music. He could not hear the tenants ask to turn down the music. The tenant went there, knocked on the door and was told that the person could make noise at 7:30, pushed the tenant and told him to get out. The tenant called police. The music got turned down and there have been no issues at all since. This is just an excuse to have the tenants evicted.

When the tenants first moved in, the landlord said he didn't want a lease, and only wanted rent paid in cash. The tenants were desperate so they moved in and the landlord has been terrible to the tenants since the beginning. The landlord has lied about the tenants spraying the neighbours dogs however the dogs were too loud and the City took care of that. There was no garbage or things thrown over the fence; that is a complete lie. The landlord knows he has no reason to evict, and this is the 2nd time this year. The landlord wants to rent for more money and is upset that the tenants notified the City about the illegal suite in the basement.

The second tenant (JZ) testified that this has been a stressful experience, waiting for dispute resolution and having to listen to the lies that the landlord fabricates in hearings, and this is the 2nd time this year.

The tenant also confirms the testimony of her husband.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy*

Act, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The landlord's agent was not able to tell me when the Notice was served.

I have reviewed all of the evidentiary material, and I find that the landlord has established absolutely no illegal activity.

The allegations of the neighbour cannot be considered because they are not dated and therefore there is nothing before me to satisfy me that these allegations were not already considered by the Arbitrator of the previous hearing. One of the allegations allegedly took place after the Notice to end the tenancy was issued. Further, the *Act* states that a landlord may end a tenancy if the tenants significantly interfere with or unreasonably disturb another occupant or the landlord or seriously jeopardize the health or safety or lawful right of another occupant or the landlord. The neighbours in this case are not occupants or the landlord.

In the circumstances, I am not satisfied that the landlord has established any of the reasons for issuing the Notice, and I cancel it.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the tenants as against the landlord, and I order that the tenants may reduce rent for a future month by that amount or may otherwise recover it by filing it as a judgment in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, the One Month Notice to End tenancy for Cause dated May 20, 2021 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants may reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: September 09, 2021

Residential Tenancy Branch