



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenants applies to cancel a One-Month Notice to End Tenancy pursuant to s. 47 of the *Residential Tenancy Act* (the “*Act*”). They also seek return of their filing fee pursuant to s. 72.

M.W. and C.F. appeared on their own behalf as Tenants. C.C. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord advised serving the Tenants with the One-Month Notice to End Tenancy signed June 14, 2021 by posting it the Tenants door on June 14, 2021. I find that the Tenant was served with the notice in accordance with s. 88 of the *Act*. Pursuant to s. 90, I deem the Tenant’s to have been served with the notice on June 17, 2021.

The Tenants indicate that they served the Landlord with the Notice of Dispute Resolution and their evidence by way of registered mail sent in mid-July 2021. The Landlord acknowledged receipt of the Tenants Notice of Dispute Resolution and evidence on July 17, 2021. I find that the Tenants served the Notice of Dispute Resolution and their evidence in accordance with s. 89 of the *Act* and was received by the Landlord on July 17, 2021.

The Landlord advised serving their responding evidence on the Tenants by way of registered mail sent on September 17, 2021. The Tenants acknowledged receipt of the Landlord's evidence. I find that the Landlord's evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenants to have been served on September 22, 2021.

Preliminary Issue – Amending Style of Cause

The Tenants listed C.C. as Landlord in their application. At the hearing, C.C. clarified that she acted as agent for Landlord and that the proper Landlord is listed in the tenancy agreement tendered into evidence. The Tenants raised no objections to amending the style of cause to reflect the Landlord as listed in the tenancy agreement. Pursuant to Rule 4.2 of the Rules of Procedure, I amend the style of cause to reflect the Landlord as stated in the tenancy agreement put into evidence.

Issue(s) to be Decided

- 1) Whether the One-Month Notice to End Tenancy signed June 14, 2021 ought to be cancelled and, if not, should an order for possession be granted?
- 2) Is the Tenant entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties advised that the tenancy began in October 2017. A written tenancy agreement, signed March 1, 2020, was put into evidence. The parties indicate that the tenancy agreement was updated to include C.F. as co-tenant after she moved into the rental unit with M.W., who occupied it since October 2017. Rent was payable in the amount of \$599.50 due on the first day of each month. The Landlord holds a security deposit of \$292.50 in trust for the Tenants.

The Landlord indicated issuing the One-Month Notice to End Tenancy on June 14, 2021 following a series of noise complaints received from the Tenants. The Landlord indicated that other occupants began to complain of noise in the spring of 2020, which resulted in the Landlord issuing warnings to the Tenants in June and July 2020. The

Landlord advises that a tenant within the residential property, which is a multi-unit property, ended their tenancy in April 2020 and cited noise issues with the Tenants for the reason the tenancy was ended.

The police attended the residential property following a dispute between M.W. and C.F. on March 1, 2021, after which point the Landlord issued a One-Month Notice to End Tenancy on the same day. The parties were able to reach an agreement that the Landlord would withdraw the Notice to End Tenancy on the basis that the Tenants would undertake to correct their behaviour and end their disturbances to the quiet enjoyment of the property by its other occupants. The Landlord indicates this agreement was made on April 15, 2021.

The Landlord indicates that the Tenants' behaviour had improved after their agreement in the spring of 2021, though matters deteriorated after a series of complaints beginning in May 2021. The Notice to End Tenancy of June 14, 2021 cites receipt of multiple complaints from other tenants that M.W. had been drinking heavily and causing disturbances in the yard late into the night. C.C. advises attending the property on May 19, 2021 in which, in her view, M.W. was visibly intoxicated and staggering around the property. C.C. further indicates that M.W. brushed up against her on that occasion despite C.C. telling him to step away from him.

The Landlord says the police attended on June 13, 2021 and on October 2, 2021 after being called by other occupants at the residential property due to noise complaints. In the Landlord's submissions, the incident of October 2, 2021 involved the Tenants making noise, directing obscenities at other occupants of the residential property, and threatening other occupants. It should be noted, these accounts were relayed to the Landlord by the other occupants themselves as C.C. was not present on those occasions.

The Tenant, for the most part, denies the Landlord's narrative of events. The Tenants acknowledge that the police had attended a dispute they had in March 2021. C.F. further acknowledged that she was escorted off the property. The Tenants outright deny the police attended the property on June 13, 2021 or any other day in June for that matter. The Tenants deny being drunk at the property in a manner that disturbs other occupants, deny harassing or otherwise disturbing other occupants, and deny playing music loudly.

The Landlord's evidence includes evidence from the occupant of a neighbouring property and that of a tenant at the residential property. The tenant's letter, dated July 26, 2021, indicates the following:

- C.F. had been intoxicated for 3 days and was loud with other residents as they came and went from the residential property, harassing them about wearing masks.
- That C.F. had been very loud and acted belligerently with neighbouring property owners, which included a physical altercation that had to be broken apart.

When the Tenants received these letters from the Landlord, M.W. admits to becoming angry. He acknowledges that he played his music loudly, which prompted the neighbouring property owner to call the police. This occurred in October 2021. On that occasion, M.W. denies yelling or threatening anyone and that he may have been swearing loudly within the rental unit, though it was not directed toward to outside the rental unit.

The Tenants argue that the Landlord is trying to evict them on the basis that the property owner, P.A., is looking to move into their unit and because they would like to re-rent the rental unit for higher rent due to increases in the market rental rate within the community. The Tenant had no evidence to indicate the Landlord intended to occupy the rental unit and the Landlord's agent denied that this was the case.

The Landlord asserted that she received complaints from six other occupants. The Tenants say no one, other than the tenant that moved out in the spring of 2020, has spoken to them about these types of issues. The Landlord argues that the building's occupants do not wish to speak with the Tenants due to their fear of doing so.

Analysis

The Tenants seek to cancel a One-Month Notice to End Tenancy issued pursuant to s. 47 of the *Act*.

I find that the One-Month Notice to End Tenancy signed June 14, 2021 complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

Under s. 47 of the *Act*, a landlord may end a tenancy for cause and serve a one-month Notice to End Tenancy to the tenant. A tenant may dispute a one-month notice by filing an application with the Residential Tenancy Branch within 10 days after receiving the notice. If a tenant disputes the notice and files an application, the burden for showing that the one-month notice was issued in compliance with the *Act* rests with the landlord.

The Landlord reason for ending the tenancy is that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord as per s. 47(1)(d)(i). Section 47(1)(d)(i) is intended to protect the right of quiet enjoyment to other occupants and the landlord from a tenant's conduct that falls short of illegal activity, which is covered by s. 47(1)(e).

I am satisfied that the Landlord has demonstrated that the Tenants have unreasonably disturbed and significantly interfered with the right of quiet enjoyment of the other occupants at the building. I place significant weight on the written account provided by the residential property tenant and the disturbances made by the Tenants over the past several months.

I further find the following time frame particularly relevant:

- February 2020 – C.F. moves into the rental unit.
- Spring 2020 – Landlord receives noise complaints regarding the Tenants.
- April 2020 – Another tenant vacates the residential property due to noise issues with the Tenants.
- June and July 2020 – Warnings are issued by the Landlord.
- March 1, 2021 – The police attend following a dispute between C.F. and M.W.
- March 1, 2021 – The first Notice to End Tenancy is issued.
- April 15, 2021 – The first Notice to End Tenancy is withdrawn on the understanding the Tenants behaviour would improve.
- May-June 2021 – Additional complaints come from occupants at the residential property.
- June 13, 2021 – The police attend a second time.
- June 14, 2021 – The second Notice to End Tenancy is issued.

I find the chronology to be indicative of a pattern of behaviour that the Landlord attempted to address with the Tenants since C.F. moved into the rental unit but was unable, which has resulted in a series of disturbances that have adversely impacted the other occupants of the residential property. I accept the Landlord's testimony that they have received complaints from six other tenants regarding the Tenants behaviour and

further accept that they have not addressed these issues directly with the Tenants due to their fear in doing so.

The accounts of those individuals from neighbouring properties are not relevant to my determination. Section 47(1)(d)(i) of the *Act* only protects the right of quiet enjoyment to tenants at the residential property or the landlord when they reside at the residential property. The *Act* does not protect against disputes between tenants and occupants of neighbouring properties. Those types of disputes are beyond the jurisdiction of the Director.

In short, I find that the Tenants have unreasonably disturbed and significantly interfered with other occupants at the residential property and that the cause listed in the Notice to End Tenancy is valid. Accordingly, the Tenants application to cancel the notice is dismissed.

Section 55(1) provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As the Tenants application is dismissed, I grant the Landlord an order for possession pursuant to s. 55 of the *Act*.

Conclusion

I dismiss the Tenants application to cancel the One-Month Notice to End Tenancy signed June 14, 2021. Accordingly, the Landlord is entitled to an order for possession pursuant to s. 55(1). The Tenants are to give vacant possession of the residential unit to the Landlord no later than **two (2) days** after being served with the order.

As the Tenants were unsuccessful in their application, they are not entitled to return of their filing fee.

It is the Landlord's obligation to serve the order on the Tenant.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: October 27, 2021