



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* ("Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause, dated June 27, 2021 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, male tenant ("tenant") and "female tenant" did not attend this hearing, which lasted approximately 38 minutes. The two landlords, female landlord ("landlord") and "male landlord," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 10:08 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the two landlords and I were the only people who called into this teleconference.

Both landlords stated that they owned the rental unit. They confirmed the rental unit address during this hearing.

At the outset of this hearing, I informed the landlords that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both landlords separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing process to the landlords. They had an opportunity to ask questions. They stated that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests.

The landlords stated that they did not receive a copy of the tenants' application for dispute resolution hearing package. They said that they called the RTB after they served the 1 Month Notice to the tenants and were told that the tenants disputed the notice. They confirmed that they were given the access code to call into this hearing from the RTB.

The landlords stated that they personally served their evidence package to the tenants on October 26, 2021. I informed the landlords that I could not consider their evidence package at this hearing or in my decision because it was served late, less than 7 days prior to this hearing on November 2, 2021, not including the service or hearing dates.

The male landlord testified that he personally served the female tenant with the landlords' 1 Month Notice on June 27, 2021. The landlord confirmed the effective move-out date on the notice is July 31, 2021. The tenants stated in this application that the female tenant personally received the notice on June 27, 2021. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the landlords' 1 Month Notice on June 27, 2021.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issue to be Decided

Are the landlords entitled to an Order of Possession for cause based on the 1 Month Notice?

Background and Evidence

While I have turned my mind to the testimony of both landlords, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The landlord stated the following facts. The tenants' tenancy began in 2013 with the former owners, who are the male landlord's parents. The landlords purchased the rental property from the former owners and continued the tenancy with the tenants. A new written tenancy agreement was signed by both parties, effective on January 1, 2020. Monthly rent in the current amount of \$1,231.20 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenants and the landlords continue to retain this deposit. The tenants continue to reside in the rental unit. The rental unit is the lower, basement suite of a house, where the landlords occupy the two upper floors of the same house.

The landlords stated that the 1 Month Notice was issued to the tenants for the following two reasons:

- *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.*

The landlord testified regarding the following facts. There were two major events on June 17 and 27, 2021, where the police were called against the tenants. On June 17, 2021, the landlord was mowing the lawn, one piece of the tenants' items got stuck in the lawnmower, the tenant became aggressive and threw a net over the head of the landlord, and the male landlord got involved. The landlords called the police, who told the landlords to think about ending this tenancy. On June 27, 2021, during the heat wave, the male landlord was cleaning the air conditioning unit, since it was not working properly, and a repair person advised him to "hose it down." The "tenant got in the male landlord's face," asking to move the trampoline in the yard, and the male landlord said

no because he was having his child's birthday party there. The tenant got "mad" at the male landlord, both tenants tried to move the trampoline on their own and hit the landlords' shed. The tenants then got two lawn chairs and sat in the middle of the yard. The landlords called the police and requested a police report but have been unable to get it yet, due to a backlog. The police encouraged the landlords to pursue eviction, due to the hostile nature and escalation of the tenant's behaviour.

The landlord stated the following facts. The tenant makes lewd gestures and "points at his crotch" around the landlord and her two young children, who are 2.5 and 9 years old. The tenant "fingers" the security cameras around the house and the landlords' two young children can see it and have asked why he does it. The tenant spit on one security camera at the entrance of the property, which is "irresponsible" during this covid-19 pandemic. Both the landlords are health care workers and have been following the rules. Since the 1 Month Notice was issued to the tenants, the landlords are "afraid" of the tenant's "retaliatory behaviour," they try to have "minimal engagement" with him, they spend most of their time indoors to avoid the tenant, even during the summer months, and they "do not feel "safe" around the tenant. The landlords have changed their plans, cancelled their furniture deliveries to the house, they stay home a lot and out of the way of the tenant, they usually only communicate via email and text message, and the landlord avoids eye contact with the tenant. The fire alarm went off and the tenant became aggressive again. The tenant would not let the landlords into their rental unit, but the female tenant said they could come over. The landlords are worried about entering the rental unit since the tenant refused.

During this hearing, the male landlord confirmed all of the above information and agreed with the facts as stated by the landlord.

Analysis

According to subsection 47(4) of the *Act*, tenants may dispute a 1 Month Notice by making an application for dispute resolution within 10 days after the date the tenants received the notice. The tenants received the 1 Month Notice on June 27, 2021, and filed this application to dispute it on July 5, 2021. Therefore, the tenants are within the 10-day time limit under the *Act*. However, the tenants did not appear at this hearing to present their submissions.

On a balance of probabilities and for the reasons stated below, I find that the landlords issued the 1 Month Notice for a valid reason. I find that the male tenant significantly interfered with and unreasonably disturbed the landlords and other occupants at the rental property. As I have found one of the two reasons on the 1 Month Notice to be valid, I do not need to examine the other reason.

I accept the undisputed testimony of the landlords at this hearing. The tenants did not attend this hearing. I find that the tenant engaged in aggressive, dangerous, unsafe, and lewd behaviour at the rental property. I find that this caused significant interference and unreasonable disturbance to the landlords and their two children occupants at the rental property. I find that the landlords stated detailed reasons for cause on the 1 Month Notice itself, a copy of which was provided by the tenants for this hearing. I find that the landlords explained these details during this hearing, as noted below.

I find that the tenant spitting at the security camera is an unsafe and dangerous action during a worldwide covid-19 pandemic, which is contrary to public health directions. I find that the landlords and their children do not feel safe around the tenant at the rental property, since they avoid communicating with him in person, they avoid eye contact, they avoid going outdoors, they avoid inspecting the rental unit, and they have changed their plans and deliveries to the rental property. I find that the tenant's lewd behaviour and gestures towards the landlord and the security cameras at the rental property, cause fear and concern for the landlord and her two young children. I find that the landlords have called the police twice regarding the tenant's behaviour on June 17 and 27, 2021, and they were encouraged to pursue an eviction by the police, due to the hostile, escalating behaviour of the tenant. I find that the tenant's actions of throwing a net over the head of the landlord, being aggressive towards the male landlord, attempting to move the landlords' trampoline property and hitting the landlords' shed property, have all caused fear and concern for the landlords.

Section 55(1) of the *Act* reads as follows:

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.*

Accordingly, I find that the landlords' 1 Month Notice, dated June 27, 2021, complies with section 52 of the *Act*. I issue an Order of Possession to the landlords, effective two (2) days after service on the tenants. The effective date of the notice has passed and the landlords requested an immediate Order of Possession at this hearing.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord(s) effective two (2) days after service on the tenant(s). The tenant(s) must be served with a copy of this Order. Should the tenant(s) or anyone on the premises 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: November 02, 2021

Residential Tenancy Branch