



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cypress Garden Apartments and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The tenants, the landlord's agent (agent), and the landlord's witness (witness) were present at the beginning of the hearing. The witness was affirmed and excused from the hearing until his testimony was needed. The hearing process was explained to the remaining parties and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. All parties provided affirmed testimony they were not recording the hearing.

The tenants confirmed receiving the landlord's evidence, and the agent confirmed receiving the tenants' application.

Thereafter parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Procedural Matters-

At the end of the hearing, the tenants asserted that the landlord's witness should not have been allowed to testify as they were not advised the landlord was calling a witness and they did not know what the witness was going to say.

I note that the witness was present at the beginning of the hearing, was introduced as a witness for the landlord, was affirmed, and then was excused from the hearing until the time for his testimony.

The tenants did not present an objection to the witness until the end of the hearing. The tenants also did not request to cross-examine the witness after his testimony. I determined that the witness provided direct testimony and his testimony was relevant to the proceedings. Therefore, I have considered the witness' first-hand accounting of events.

In addition, the only written submissions I had before me from the tenants was their application. The tenants said they sent in some letters as well. The agent denied that he received additional evidence from the tenants.

I was not convinced the tenants provided additional evidence. However, out of an abundance of caution, I allowed the tenants to read that evidence during the hearing. As a result, with the tenants' testimony, their evidence was considered during these proceedings.

In addition, the agent referred to their digital evidence, which was on a USB stick. This digital evidence had not been uploaded at the time of the hearing. The tenants objected to the digital evidence, which they received. The digital evidence contained recordings

of the tenants and they asserted that it could not be used as they did not know they were being recorded.

I note that ultimately, I did not need or use the recordings, as I made a finding on the merits of the landlord's Notice with the evidence presented at the hearing.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or are the tenants entitled to an order cancelling the Notice?

Background and Evidence

The undisputed evidence is that this tenancy began on or about May 1, 2019. The rental unit is on the top floor of a multi-unit apartment building.

Filed in evidence was the Notice. The Notice was dated November 17, 2021, for an effective date of December 31, 2021, and was served to the tenants by registered mail and received by the tenants on November 20, 2021, according to the tenants.

The reason listed on the Notice to end tenancy was:

- the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The agent provided the following testimony and references to their documentary evidence:

The agent, the resident property manager, stated that there has been ongoing issues with the tenants for at least two years. The agent said that the tenants are constantly too loud, use loud, vulgar language, and continue to bang on the floors and walls of their rental unit. The agent said the tenants' behaviour has disrupted the tenant who lives below the tenants. That tenant was the witness for the hearing.

The agent said that the male tenant admitted to him he has taken their coffee table and slammed it on the floor. On another occasions, the male tenant called the agent and informed him they are having a party.

The agent said that the witness has been constantly complaining for two years and he has had to caution the tenants many times for the past two years. However, the excessive noises continued.

The agent said he had no alternative other than serve the tenants the Notice, as the excessive noise and banging have not improved in two years. The agent said that he has issued at least one other One Month Notice, in the hope that the situation would improve, but it did not. The agent submitted a copy of the final written warning to the tenants.

The landlord said that he has heard the loud noises from the tenants' rental unit.

The landlord submitted copies of the text message communication between the agent and the witness about the noise and banging. Also filed in evidence were statements from other tenants in the residential property, describing the tenants' behaviour as "yelling, rude & vulgar comments & glared at me trying to engage in arguments (from the street)", "loud yelling-cursing", "yelling and arguments", and "loud, noisy, yelling".

The agent in the hearing said that if I granted an order of possession of the rental unit to the landlord, he would prefer an effective date of January 31, 2022, rather than a 2-Day order of possession.

Landlord's witness' testimony –

The witness stated that he has had issues with the tenants for over two years, with their yelling and screaming. The witness said that the tenants have come down to his home numerous times, swore at him and have often yelled out, calling him a "f*g**t" many times as well as racial slurs. At other times, the tenants would yell out from upstairs from their balcony that they were going to come down and "kick his ass".

The witness said that the tenants bang on their floor, throwing tantrums and jumping up and down on their floors, which is above his ceiling. The witness described the tenants' behaviour as aggressive towards him, including when they come down and kick his door, calling him by other vulgar names.

The witness said that when he complains to the agent and the agent addresses those complaints with the tenants, they “lose it” and start “freaking out”.

The witness said that the female tenant came to his home on Christmas Day, and after he told her he did not want to engage that day, she said “f**k you, a**hole”.

The witness said one of the worst things the tenants do is pound on his ceiling all the time between 3:00 and 4:00 a.m., causing a loss of sleep. The witness said he is tired all the time from losing sleep.

Tenants’ response –

The tenant said that the agent was to set up a meeting between the parties, but the meeting never happened.

The tenants submitted that they are entitled to have guests over, to listen to music at reasonable times, saying they are entitled to their quiet enjoyment.

The tenant said it was the witness who is banging all the time. The tenant said that they have never had a party and have only had three other people over at one time.

Tenant HT said that he barely curses and has never hit the female tenant.

Tenant KF said that she has never called the witness by a racial slur as she and the other tenant were from racially diverse backgrounds.

HT said that there is no insulation in the building as it is old, enabling him to hear conversations from other residents in the building.

HT said that they do not bang on their floor, but suggested that moving furniture around when cleaning and sweeping the floor, which they are allowed to do, may be the source of the noise.

Analysis

Section 47(1)(d)(i) of the Act authorizes a landlord to end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered

with or unreasonably disturbed another occupant or the landlord of the residential property.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Section 28 of the Act states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

After careful consideration of the foregoing testimony, documentary evidence, and on a balance of probabilities I find as follows:

The agent submitted that the tenants have repeatedly engaged in excessive noise, including yelling and banging at all hours of the day and night, causing the lower tenant to lose his quiet enjoyment. The agent said he has heard the loud noises caused by the tenants and that the tenant HT himself phoned him to tell the agent of their party.

The agent submitted that he has worked with the tenants for over two years to correct the situation, but has been unable to do so. The agent said he had no choice other than seek the eviction of the tenants in order to ensure the quiet enjoyment for all residents of the residential property.

In addition, the witness who lives in the rental unit below the tenants, testified that the tenants have called him vulgar names, using homophobic and racial slurs, and threatening violence against him.

I prefer the testimony and evidence of the agent, in part, because it was delivered in a forthright, consistent, and direct manner. I found the agent's testimony was more reasonable in the circumstances. The agent said he has heard the loud banging of the tenants and the tenant himself called to tell him they were having a party, contradicting the statements of HT, who said they have never had a party. I find this statement of HT to be self-serving.

In addition, I found the landlord's witness, who had direct knowledge of the matters, to be consistent and credible and I found his version of events had the "ring of truth". While tenant KF denied using racial slurs, they never denied repeatedly yelling to the witness, calling him a "f*g**t", as presented by the witness. I find their lack of denial supports the witness' testimony.

I also find the landlord submitted compelling documentary evidence from other tenants which supports that the tenants are excessively loud, vulgar, and aggressive to other tenants as well.

I find a reasonable person would be unreasonably disturbed by being called hateful names, by the excessive noise and yelling, and from the loud banging at all hours, causing a significant loss of sleep to the witness. Further, I find the evidence clearly shows that the tenants, even ones who live on the first floor, seriously impacted the quiet enjoyment of the other occupants of the residential property, for an extended period of time, for which they received verbal and written warnings.

I find the landlord was left with no choice but to issue the tenants the Notice, to preserve the quiet enjoyment of all their other tenants.

Given that I find the landlord's agent's testimony and documentary evidence and the witness' testimony to be credible, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

As a result, I **dismiss** the tenants' application requesting cancellation of the Notice, without leave to reapply, as I find the One Month Notice valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective **January 31, 2021, at 1:00 p.m.**, at the request of the landlord's agent.

The order of possession is included with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon

them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenants.

Conclusion

The tenants' application is dismissed, without leave to reapply, as I find the landlord's Notice valid, supported by the evidence and therefore, enforceable.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 12, 2022

Residential Tenancy Branch