



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, OLC
For the landlord: OPC, FF

Introduction

This hearing was convened as the result of the cross-applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the landlord; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to the One Month Notice issued to the tenants; and
- to recover the cost of the filing fee.

The landlord's agent (agent) attended the hearing; the tenants did not attend.

The agent affirmed he was not recording the hearing.

The agent said that he served each tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on October 8,

2021. The landlord provided the Canada Post registered mail receipts showing the tracking numbers for service on the tenants.

I find the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenants' absence.

The agent said he was unaware the tenants had an application set for hearing on the same day and time, as he was never served with the tenants' application package.

Thereafter the agent was provided the opportunity to present his evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

Despite having their own hearing scheduled for 11:00 a.m. on January 6, 2022, as well as the landlord's application and notice of hearing, the tenants failed to attend the hearing.

Rules 7.3 and 7.4 of the 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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants at the hearing, I order their application dismissed, **without leave to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit pursuant to the One Month Notice and recovery of the filing fee paid for this application?

Background and Evidence

The agent said that the tenancy began on July 1, 2021 and monthly rent is \$2,000. There was no security deposit paid.

The agent submitted evidence that they served the tenants the One Month Notice by leaving a copy at the tenants' residence with an adult who apparently resides with the person on August 15, 2021. The Notice was dated August 15, 2021, and listed an effective date of September 30, 2021. The landlord filed a copy of the Notice into evidence.

The causes listed on the Notice stated that the tenant has allowed an unreasonable number of occupants in the rental unit and residential property, and that the tenant or a person allowed on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and put the landlord's property at significant risk.

The agent submitted that he began receiving complaints from neighbours about the excessive amount of noise from the rental unit and people fighting in the back yard. This caused the police to be called and the agent to begin investigating the matters of an excessive amount of people in the rental unit.

The agent said that he has noticed an unusually large amount of people coming in and out of the rental unit at all hours.

The agent said he inspected the rental unit with a by-law officer. During the inspection, they noticed that there were at least 6 beds in the 3 bedroom home, located all over the rental unit. The agent said that there was someone living in the unfinished basement, which was not allowed by the fire marshal and municipal bylaw, as there was no fire separation or ventilation. The agent also said it was possible there had been more beds. However, they could not determine whether this was the case as the tenants had a 24-hours inspection notice to clean the residential property.

The agent said there were people living in the camper parked in the driveway of the residential property.

The agent said that the tenants have put in an unauthorized bike shop in the living room, which had wrecked the living room, hard wood flooring.

Filed in evidence were photographs of the residential property, inside the rental unit and a “no occupancy” notice from the municipality regarding the basement.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Subparagraph 47(1)(c) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where there are an unreasonable number of occupants in a rental unit.

The landlord bears the burden of proving they have grounds to end this tenancy and must provide sufficient evidence to prove the cause alleged on their Notice.

I find the landlord served the tenants with a One Month Notice on August 15, 2021. The tenants filed an application to dispute the Notice, confirming receipt of the Notice on that date. A copy of the One Month Notice was filed in evidence for my review and consideration, in addition to the supporting evidence for which the One Month Notice was served.

I have reviewed the One Month Notice and find it was completed in accordance with section 47 of the Act. I also find the One Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I find that the landlord has submitted sufficient, undisputed evidence to support at least one of the causes listed on their Notice.

I find that the landlord submitted sufficient evidence to show that there were at least six, if not more, beds being occupied in the 3 bedroom rental unit. One of the beds was located in the unfinished basement, which is not approved for use as a bedroom.

In addition, I find the landlord submitted sufficient evidence that there were other occupants living on the residential property in the unapproved camper parked in the driveway.

Overall, I find, on a balance of probabilities, that the landlord has submitted sufficient evidence to prove that there is an unreasonable number of occupants in the rental unit and residential property.

As I find support for one of the listed causes, it was not necessary to consider the additional causes on the One Month Notice.

I therefore **order** the tenancy ended on September 30, 2021, the effective date of the One Month Notice.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)** effective two days after service of the order upon the tenants.

The tenants must be served the Order to be effective. If the tenants fail to voluntarily comply by vacating the rental unit immediately, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

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

As the landlord was successful with their application, I grant the landlord recovery of their filing fee of \$100. As a result, I issue a monetary order to the landlord in the amount of \$100.

Conclusion

The tenancy has been ordered ended on September 30, 2021.

The landlord's application for an order of possession of the rental unit and a monetary order for \$100 is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service of the order upon the tenants.

The tenants' application is dismissed, without leave to reapply, as they failed to attend the hearing to present evidence and failed to serve the landlord with their application for dispute resolution.

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 6, 2022

Residential Tenancy Branch