



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Prestige Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. The Tenants had applied:

- to dispute a One Month Notice to End Tenancy for Cause, dated November 1, 2021 (the One Month Notice); and
- for the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenants testified they served their Notice of Dispute Resolution Proceeding on the Landlord to an email address agreed upon for service on November 13, 2021. The Landlord confirmed they received the documents. I find the Tenants served the Landlord in accordance with section 89 of the Act.

The Landlord testified they served their responsive evidence on the Tenants to an email address agreed upon for service on January 8, 2022. The Tenants confirmed receipt of the Landlord's evidence. I find the Landlord served the Tenants in accordance with section 88 of the Act.

Issues to be Decided

- 1) Are the Tenants entitled to an order to cancel the One Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began September 7, 2020; rent is \$4,000.00 a month, due on the first of the month; and the Tenants paid a security deposit of \$2,000.000, which the Landlord still holds.

The Landlord testified that the home has three “regular-sized” bedrooms and a basement. The Tenants testified that there are four bedrooms and a basement.

The rental unit is a detached house.

The Landlord testified they served the One Month Notice on the Tenants by email on November 1, 2021, which the Tenants confirmed. A copy of the One Month Notice was submitted as evidence. The Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The One Month Notice indicates the tenancy is ending because:

- the Tenant has allowed an unreasonable number of occupants in the unit;
- the Tenant or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord;
- the Tenant has assigned or sublet the rental unit without Landlord’s written consent.

Regarding the claim that the Tenants have allowed an unreasonable number of occupants in the unit, the Landlord testified they have a verbal agreement with the Tenants that they may have a maximum of five people occupying the rental unit. This agreement was confirmed by the Tenants.

The Landlord submitted as evidence a copy of a letter dated June 21, 2021 from a law firm, with the complainant’s name redacted. The letter details noise and other disturbance complaints regarding the Tenants. It includes: “The situation has worsened

since May, 2021. ... Ms. [redacted] believes that more than 7 or 8 people reside at the [street number] Property.”

The Landlord submitted as evidence a copy of a letter dated July 26, 2021 from the neighbours on each side of the rental unit, i.e., two sets of people, complaining about the amount of noise and disturbance the Tenants are creating. It includes: “Please consider setting a reasonable number of tenants, occupants and visitors.”

The Landlord submitted as evidence a copy of a letter dated August 3, 2021 from the neighbours ST and WP, who live on one side of the rental unit. In the letter to the Landlord, the neighbours complain about being disturbed by the Tenants. It includes: “You have clarified to us before that there are terms in the rental agreement regarding a 5-person maximum occupancy ... These terms, as we have observed and warned you, are obviously being broken.”

The Landlord submitted as evidence an email dated October 12, 2021 from the neighbour ST. The email states:

here is a copy of the very recent ad for a room in your property facebook market place -see 2nd row left -shows deck/table on your property and our house in the back ground
states there is currently 6 un related individuals living there looking for a 7th

[reproduced as from original]

The email contains screenshots of Facebook Marketplace advertisements for a “large and sunny room in shared house.” In the email string, there is an email dated September 25, 2021 from ST; in it, the ad states: “you will be living with 6 easy going, chill and multicultural people.” The photos in the ads show rooms in the house, a deck, and views of the neighbouring houses.

The Landlord called ST as a witness. ST provided affirmed testimony that there are always over seven people occupying the rental unit.

Regarding the claim that the Tenants or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, the Landlord provided testimony and evidence that the Tenants have repeatedly disturbed the neighbours on each side of the rental. The Landlord did not

provide testimony or evidence around how the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord.

Regarding the claim that the Tenants have assigned or sublet the rental unit without the Landlord's written consent, the Landlord testified that this issue had been raised by the neighbours, but when the Landlord and a colleague had recently visited the rental unit, "there was definitely no sign of subletting."

The Tenant testified that there are four occupants in the unit, though they are allowed five. The Tenant testified that every time the neighbours complain, the Tenant invites the Landlord to tour the house to see the number of people living there.

The Tenant testified that there has never been more than five occupants in the rental. The Tenant submitted that they had friends visiting in the summer, and at one point there were seven people sleeping there, but it was for less than a month.

The Tenant testified that the neighbours have her telephone number, and that she has asked them to text her if the Tenants are being too loud, but the neighbours never have.

The Tenant testified they have called the police on the neighbours because the neighbours harassed them. The Tenant testified the neighbours watched them, a neighbour has said "You guys are stupid," and one of the neighbours referred to the Tenant as "an ignorant immigrant."

The Tenant testified that one of the neighbours approached the surrounding neighbours and asked them to email the Landlord, petitioning the Landlord "to kick them out."

The Tenant submitted that "[the neighbours] don't like we are here," and that "we are just living normal lives."

The Tenant submitted that they are not subletting the rental unit.

Analysis

Based on the testimony of the parties, I find the Landlord served the Tenants the One Month Notice on November 1, 2021 to an email agreed upon for service, in accordance with section 88 of the Act. I find the Tenants received the Notice on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act.

Section 47(1)(c) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy if there are an unreasonable number of occupants in the rental unit.

I accept the affirmed testimony of the Landlord and the Tenants that the parties had a verbal agreement that the Tenants could have a maximum of five occupants in the rental unit.

I accept the documentary evidence submitted by the Landlord, in which on June 21, 2021; July 26, 2021; and August 3, 2021 the Tenants' neighbours complained in writing that the number of occupants in the rental unit is excessive and disruptive.

I accept the documentary evidence submitted by the Landlord, in which one of the neighbours identifies a picture of the rental property on Facebook Marketplace, advertising to find a seventh occupant, stating that there are currently six.

I accept the affirmed testimony of the Landlord's witness, and the Tenants' neighbour, ST, that seven people occupy the rental unit.

The Tenants have allowed more occupants in the unit than the five permitted by their verbal agreement with the Landlord. The fact that the Landlord included the five-occupant maximum as a (verbal) term in the tenancy agreement gives weight to the importance of this consideration to the Landlord.

As I find on a balance of probabilities, meaning more likely than not, that the Tenants have allowed an unreasonable number of occupants in the rental unit, I find the Landlord may end the tenancy pursuant to section 47 of the Act.

Therefore, I dismiss the Tenants' application to cancel the One Month Notice.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must grant an order of possession to the landlord.

Therefore, I find the Landlord is entitled to an order of possession.

As the tenancy is ending, I find it is unnecessary for me to consider the other reasons indicated on the One Month Notice.

As the Tenants are unsuccessful in their application, I decline to award them the filing fee.

Conclusion

The Tenants' application is dismissed; the One Month Notice is upheld.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants.

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: February 3, 2022

Residential Tenancy Branch