



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Assistant Property Manager, LV, and the Tenant, TB, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the One Month Notice on the Tenants on December 27, 2021 by placing the document in their mailbox. LV stated that another manager witnessed the One Month Notice being placed in the Tenants' mailbox. The Tenants confirmed receipt of the One Month Notice. I find that the One Month Notice was deemed served on the Tenants on December 30, 2021 pursuant to Sections 88(f) and 90(d) of the Act.

The Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on January 14, 2022 (the "NoDRP package"). The Landlord confirmed receipt of the NoDRP package on January

14, 2022. I find that the Landlord was served with the NoDRP package for this hearing on January 14, 2022, in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are not successful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on August 1, 2021. The fixed term will end on July 31, 2022, then the tenancy will continue on a month-to-month basis. Monthly rent is \$1,600.00 payable on the first day of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason why the Landlord was ending the tenancy was because the Tenants failed to comply with a material term, and have not corrected the situation within a reasonable time after the landlord gave written notice to do so. The effective date of the One Month Notice was January 31, 2022. Further details listed on the One Month Notice state "*Tenants are in breach of your tenancy agreement under Section 15 of your contract.*"

Section 15 of the parties' tenancy agreement states:

CONDUCT: *In order to promote the convenience, safety, welfare and comfort of other tenants in the building, the Tenant and guests of the Tenant shall not disturb, harass, or annoy occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time; and shall maintain quiet between 11 p.m. and 9 a.m. Any tenant who causes other occupants to vacate the premises because of noise, or other disturbance, harassment or annoyance,*

shall indemnify the Landlord for any reasonable costs and losses caused thereby, and may have the tenancy terminated on short notice pursuant to the Act.

LV testified that she received four complaints of noise from the unit above the Tenants. The complaints are described as noisy sex and parties from the Tenants. LV said if they receive more than two complaints, they issue a warning letter to the offending tenant. She stated that she has only received complaints from that one tenant. After issuance of the warning letter, LV testified that she hoped the two tenants would talk.

TB stated that he never knew about the specifics of the complaints from the tenant upstairs. TB said that he spoke to the tenant, and everything was fine. TB shared that that upstairs tenant called the police on him and his girlfriend. He said they were not loud enough to wake up their four year old child, so he did not understand how it was loud enough to disturb others. TB maintained that they can hear the upstairs tenant, but they believe that it is part of '*apartment living*'.

LV states that the Tenants are good renters, and that only the unit above them complains.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant section for this matter. It states:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

- (ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*
- (2) *A notice under this section must end the tenancy effective on a date that is*
 - (a) *not earlier than one month after the date the notice is received, and*
 - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord's One Month Notice was deemed served on the Tenants on December 30, 2021. The One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on January 2, 2022 which is within the 10 days after the date the Tenants received the One Month Notice.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement for breaching a material term of that agreement. The Guideline states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem. (emphasis mine)

Landlord informed the Tenants in writing on December 3, 2021 about a breach of a material term of their tenancy agreement. The warning letter set out that the Tenants have continued to disturb their neighbours; although, the Landlord provided evidence that she received complaints only from one neighbour. The Landlord neither provided details about the reasons for the warning letter, nor brought a witness to support that a material term had been breached. The warning letter did not contain a deadline when the problem must be fixed.

I find, based on a balance of probabilities, that the Landlord has not proven that the Tenants breached a material term of their tenancy agreement. The lack of details in the notice, and the lack of a deadline for which the problem must be fixed do not strongly support the argument that the Tenants breached a material term about conduct in their tenancy agreement. I do not find the Tenants have been disruptive to others, but I remind the Tenants that ‘*apartment living*’ is not a reason that one can be disruptive to others. Instead, apartment living, is your opportunity to be mindful of others and to conduct yourselves accordingly. Based on the testimony of the parties, I find the Landlord has not proven cause, and I cancel the Landlord’s One Month Notice. The tenancy shall continue until ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month’s rent due to the Landlord.

Conclusion

The Tenants’ application to cancel the Landlord’s One Month Notice is granted.

The Tenants may withhold \$100.00 from next month's rent to recover their application filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 21, 2022

Residential Tenancy Branch