



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNC, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 22, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel the One Month Notice to End Tenancy for Cause dated November 10, 2021 (the "One Month Notice");
- an order that the Landlord comply with the *Act*; and
- an order granting the recovery of the filing fee.

The Tenant K.S., the Tenants' Counsel M.G. and the Landlord M.C. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenants are unsuccessful in cancelling the One Month Notice are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
3. Are the Tenants entitled to an order that the Landlords comply with the *Act*, pursuant to Section 62 of the *Act*?
4. Are the Tenants entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on April 1, 2019. Currently, the Tenants pay rent in the amount of \$2,000.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$1,000.00 for a combined amount of \$2,000.00 in deposits currently being held by the Landlords. The Tenants continue to occupy the rental unit.

The Landlord stated that the Tenant has a history of noise complaints dating back to 2019. The Landlord stated that the Tenant has been cautioned many times regarding the noise emitting from the rental unit. The Landlord stated that further complaints had been received by the Landlord from multiple occupants who reside near the rental unit at the rental property, which indicate that the Tenant is causing a disturbance by “*shouting, banging, and slamming doors/walls*”. The Landlord stated that the Tenant has been provided with several written warnings and a Strata fine, however, the Tenant has not changed her behaviour. The Landlords provided a copy of the noise complaints received, as well as Strata caution notices and fine in support.

For the above-mentioned reasons, the Landlord stated that she served the Tenant with the One Month Notice on November 10, 2021 with an effective vacancy date of December 15, 2021 by Registered Mail. The Tenant confirmed having received the One Month Notice, but could not recall which date it was received. The Landlords’ reasons for ending the tenancy on the One Month Notice are;

“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 Tenants' Counsel responded by submitting that the majority of the complaints have been made by the one occupant who resides above the Tenant at the rental property. The Tenants' Counsel submits that the Landlords have not provided the Tenant with sufficient details, such as the Strata minutes, outlining the complaints received and the reasons for the subsequent decision to fine and to end the tenancy.

The Tenant stated that she cannot recall the events she is being accused of and stated that she can clearly hear other occupants who live in close proximity bickering. The Tenant stated that the other occupants have never approached her to discuss any noise issues and that Police have never attended her rental unit despite a report that one of the other occupants had contacted Police out of concern.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on November 10, 2021 with an effective vacancy date of December 15, 2021. The Tenant confirmed having received the notice, however, could not recall which date. In accordance with Section 88 and 90 of the Act, I find the One Month Notice is deemed to have been served to the Tenant five days later, on November 15, 2021.

In this case, I accept that the Landlords have received several written noise complaints from different occupants who reside in close proximity to the Tenant. I find that the complaints are all consistent and identify that the noise is emitting from the Tenant's rental unit on a regular basis. I accept that the Tenant has been provided with written warnings, and that the issue regarding noise continues.

The Tenant stated that she does not recall the events and that she has not been provided with sufficient details of the complaints. Furthermore, the Tenant stated that she can hear others bickering. In this case, I find that the Tenant provided insufficient evidence to demonstrate that she expressed her concerns regarding noise coming from a different rental unit for the Landlords to further investigate. I do not accept the Tenant's claim that she doesn't remember the events. Furthermore, I find that the

Tenant has been provided with sufficient detail explaining the Landlords' general concerns regarding the noise and its impact on other occupants.

In light of the above, I find that it is more likely than not that The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. I therefore dismiss the Tenants' Application without leave to reapply.

When a Tenants' application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55 of the Act requires that I grant an order of possession to a Landlords. I find that the One Month Notice complies with the requirements for form and content. I further find the Landlord has provided sufficient evidence to demonstrate that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

As the effective date of the One Month Notice has passed, I find that the Landlords are entitled to an order of possession effective at 1:00PM on March 31, 2022, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible.

Conclusion

The Tenants' Application is dismissed without leave to reapply. The Landlords are granted an order of possession, which will be effective at 1:00PM on March 31, 2022 after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in 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: March 16, 2022

Residential Tenancy Branch