



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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. Two Landlords, SD and SL, Legal Counsel, VS, and Witnesses, MS and AL, attended the hearing at the appointed date and time. The Tenants, AC and AC, Advocate, KT, and Supervising Lawyer, TH, also 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 testified that they served the Tenants with the One Month Notice on January 10, 2022 by posting one notice on the Tenants' door and putting another copy in the Tenants' mailbox. The Tenant confirms the posting receipt of the One Month Notice. I find that the 10 Day Notice was deemed served on the Tenants on January 13, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenants testified that they served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on January 26, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenants uploaded into their documentary evidence the Canada Post registered mail receipt with tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on January 31, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenants submitted that they served additional evidence on the Landlord, again by registered mail on March 22, 2022. The Landlord confirmed receipt of this additional evidence on March 24, 2022. I find that the Landlord was served with additional evidence which was sufficiently served on March 24, 2022 in accordance with Section 71(2)(b) of the Act.

Preliminary Matter

Neither party uploaded a full copy of the One Month Notice. I asked the Landlord to provide, at least, page two of the One Month Notice and I unlocked the portal to allow this submission. The Landlord uploaded page one and two of the One Month Notice. Both parties took this opportunity to upload additional evidence and submissions. Rules of Procedure 3.19 reads as follows:

3.19 Submitting evidence after the hearing starts

No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will:

- a) specify the date by which the evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC Office and whether it must be served on the other party; and*
- b) provide an opportunity for the other party to respond to the additional evidence, if required.*

In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence. (emphasis mine)

I only required a full copy of the One Month Notice. The Tenants uploaded, what looked like, three pages for the One Month Notice. Their submission was actually page one and two page threes of the One Month Notice which I see as an inadvertent mistake on their part. I did not request additional evidence, or submissions to be uploaded by the parties and I decline to consider these additional materials.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are unsuccessful, 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 periodic tenancy began on September 1, 2020. The current Landlord bought the home in October 2021. Monthly rent is \$2,300.00 payable on the first day of each month. A security deposit of \$1,150.00 was collected at the start of the tenancy and is still held by the Landlord. The rental unit is a rancher and it contains two separate units that share one driveway.

The One Month Notice stated the reasons why the Landlord was ending the tenancy was because the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord; have seriously jeopardized the health or safety or lawful right of another occupant or the Landlord; and have put the Landlord's property at significant risk. The effective date of the One Month Notice was February 28, 2022. Details of causes were listed as:

December 13, 2021 : Banged on the wall and loud swearing around mid night that has disturbed the other tenant.

December 19, 2021: Smoking in side the property as per complaint of another tenant. they have notice on few time on different days as well. [female Tenant] had a fight with another tenant's girl friend and she banged on wall ,swear and screamed Bitch Bitch loud around mid night.

December 23,2021: Tenant again complaint about the bang on washroom wall.

Warning Letter given on Dec21,2021.

Jan 07,2022: Again we got complaint they have smoked inside as per the another tenant as they get the smoke smell through vents.

Jan 08, 2022 : Again Banging on washroom wall around 8:30 pm.

The Landlord testified that the Tenants are bothering the other occupants by smoking in the rental unit which the Landlord states the other occupants can smell. The Landlord stated they sent a warning letter to the Tenants, but their smoking continues. There is no 'No Smoking' clause contained in the tenancy agreement.

Witnesses for the Landlord said they do not smell smoke until the heater is turned on, after that, they cannot even sit in the room. The Landlord wrote in his documentary evidence that the female tenant next door is bothered by the smoking from a medical perspective, but the witnesses did not confirm this in their testimony. The witnesses gave evidence that the Tenants send them texts where they are calling the girlfriend bad words. They also testified that sometimes the Tenants have loud parties. The witnesses stated they would text the Tenants and ask them to lower the volume.

The Landlord stated that the Tenants keep banging on the walls around midnight, although, this is not every night. The Landlord uploaded short video clips during the daytime hours which he submits supports his claims. Ambient noise in these video files seems to also be quite loud.

The Landlord also testified to noise complaints in March 2022 which is after the One Month Notice was issued.

The Tenants testified that their whole family were away for a Christmas party on a trip that lasted from December 13 to 17, 2021. They uploaded ferry receipts and hotel receipts for this time away. The Tenants claim since they were not home on December 13, 2021, whoever banged on the wall and disturbed the other tenant was not them.

The Tenants stated that only the male Tenant smokes and he does not smoke cigarettes inside their rental unit. He will go outside on the front porch to have a cigarette. The Tenants maintain that they care about their home and take good care of

it. One time, the Landlord came into their rental unit and told them, *'you cannot tell you have a dog in here.'*

One Tenant said he works very late Wednesdays to Sundays. The Tenants stated they do not purposely bang on the walls in the rental unit. The Tenants said they can hear noise from the tenants in the adjoining rental unit; specifically, when they are doing laundry, when they are having showers, and conversations. There is no acoustical insulation between the two units.

The Tenants received the Landlord's warning letter which stated that there is no smoking allowed inside the rental unit, and they must park their vehicle straight in the driveway. The Tenants testified that they called the Landlord immediately and told him they do not smoke in their rental unit.

In the Landlord's timeline, it states that the Tenants were 'Banging on wall around 8:30'. The Tenants uploaded video evidence that the female Tenant came home to the rental unit at 8:44 p.m.

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 part of the legislation in 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:*

...

(d) *the tenant or a person permitted on the residential property by the tenant has*

(i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

- (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *put the landlord's property at significant risk;*
- ...
- (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 served the Tenants with the One Month Notice on January 10, 2022. I find that the Landlord's One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on January 12, 2022 within the 10 days after the date they received the One Month Notice.

All the Landlord's evidence that is dated after the One Month Notice was given is not relevant to the reasons of cause. I find this evidence as a conflation of statements and reports in an attempt to prove the Landlord's burden and are not relevant for me to consider. The Landlord must establish cause prior to the date on the One Month Notice as to why the tenancy must end. I will now analyze each of the cause sections selected by the Landlord:

The Landlord submitted that the Tenants' smoking is a significant issue. The Landlord stated the Tenants are smoking inside the rental unit. The Landlord has not pointed to any provisions in the tenancy agreement that prohibits the Tenants from smoking in their unit or on the residential property. Anyways, the male Tenant, the only smoker in the home, testified that he does not smoke in their rental unit. The Tenants called the

Landlord when they received the warning letter about not smoking in their rental unit. The Tenants took the Landlord's assumption that they smoke in their rental unit as a personal affront, and they contacted him immediately. I am not satisfied on a balance of probabilities that the Landlord has proven that the Tenants are smoking inside their home. There is always a balance between people's rights and activities, especially when living in close proximity; however, I do not find that the Landlord or his witnesses have proven that the interference or disturbance caused from the Tenants smoking is significant or unreasonable. I cancel this part of the Landlord's claim.

The Landlord gave evidence and uploaded video clips about the Tenants banging on the shared wall between the two rental units and this disturbing the other occupants. The Tenants said they hear the daily living activities of the other tenants as there is no insulation between the two rental units. The video clips are short demonstrations of noise supposedly coming from the Tenants' rental unit. It sounds like the volume is turned up very high so as to amplify the disturbing noise supposedly from the Tenants as well as the ambient noise in the room. I am unable to determine that the noise is excessive or an unreasonable amount of noise. I find the short video clip evidence is insufficient to establish that the Tenants' daily living noises are unreasonably disturbing the other occupants.

The Landlord provided no evidence of what the Tenants are doing that is putting his property at significant risk. I cancel this part of his claim.

Based on the totality of evidence from the parties, I find that the Landlord has failed to establish that the Tenants: i) have significantly interfered with or unreasonably disturbed other occupants or the Landlord; ii) have jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant; or iii) have put the Landlord's property at significant risk. I find, under Section 47(1)(d) of the Act, there is no cause to end this tenancy, 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: April 24, 2022

Residential Tenancy Branch