



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The tenants, the landlord, and the landlord's witness were present at the beginning of the hearing. The witness was affirmed and excused from the hearing until her testimony was needed. The hearing process was explained to the remaining parties and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. All parties provided affirmed testimony they were not recording the hearing.

The parties confirmed receiving the other's evidence, and the landlord confirmed receiving the tenants' application.

Thereafter parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their Notice or are the tenants entitled to an order cancelling the Notice and recovery of the filing fee?

Background and Evidence

The tenancy began in March 2021, monthly rent is \$700, and the tenants paid a security deposit of \$350.

Filed in evidence was the Notice. The Notice was dated January 4, 2022, for an effective date of May 1, 2022, and was served to the tenants by personal service. In their application, the tenants confirmed receiving the Notice on January 5, 2022.

The reasons listed on the Notice to end tenancy was the tenant or a person permitted on the residential property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

In the details of the causes listed on the Notice, the landlord stated that the tenants have intimidated and scared another tenant due to their aggressive behaviour.

The landlord provided the following testimony and references to their documentary evidence:

The landlord said that on August 28, 2021, they gave the tenant a warning letter about their behaviour. This letter outlined that the tenants' behaviour, particularly tenant LR, has been disturbing other tenants. There were complaints about the tenants yelling at other tenants and inserting themselves into other tenants' personal affairs. Filed in evidence was the warning letter.

The landlord submitted letters from other tenants, D and C, about the tenants' behaviour. One of the tenants, DM, said that LR came up to his wife when they were trying to pay rent and started yelling. DM wrote his wife will not even go check their mail due to LR's behaviour. DM wrote they do not feel safe on the property and in their home.

KK testified she witnessed this incident.

Another tenant living on the residential property, EA, wrote that the tenants had a van for sale and this tenant purchased the van, which was in tenant, TR's, name. LR got mad and said that the other tenant "ripped them off". The tenant said she is 83 years old and every time LR sees her, he calls the tenant a "bitch" and gives the tenant the "finger". Filed in evidence was a copy of EA's letter.

Landlord KK said that they received a call from the tenant across from the tenants "crying & upset hysterically".

The landlord wrote that tenant LR was at the other tenant's vehicle intimidating the tenant to the point she was scared to get out of her car. The other tenant said that LR went to his vehicle at that point and put his lights on bright, facing into the other tenant's car. The landlord called LR's behaviour "creepy & weird".

The landlord submitted a letter from the other tenant describing the events of January 4, 2022. The other tenant is SD, the landlord's witness.

Landlord EK –

EK testified that when he served the tenants the Notice after the incident with SD, he told LR to stay away from tenants D and C, as they were scared of him. EK said that

LR has been calling EK highly offensive and vulgar names and that now when LR sees EK, he just stares menacingly at him.

Witness SD –

SD testified about two incidents, January 4 and 5, 2022. SD said she had been in the building for 36 days, having just come from a domestic shelter. SD submitted she was coming home after taking her dog to the vet, at about 5:19 pm, pulled into her parking space, when she saw LR appear at her passenger side door. SD said she had been told by D and C to stay away from LR. SD said she saw LR staring at her in a threatening manner, making rude hand gestures. SD said LR just kept moving his hands up and down, again in a threatening manner.

SD said she was quite frightened, and her dog was upset. SD said she picked up her phone and showed LR, and he left. SD said that LR then got in his vehicle and turned towards her, with his lights on high beam. SD said she was so frightened, sat in her car until around 6:00 pm. When the tenant went inside, she called the landlord and the RCMP, who said to call back if there were any more incidents. SD said that she lives next door to the tenants.

SD testified that the next day, January 5, 2022, she was coming back from walking her dog, when she encountered the tenants. SD said she heard the tenant whisper under their breath, calling her a troublemaker. Then LR came into her personal space, having a menacing look on his face. SD said she told the tenants she was recording them, and they changed directions and left. SD said she then called the landlord and the RCMP again.

SD testified that there has been intimidation and harassment from the tenants and she does not feel safe in the building, living next door to the tenants. SD said that every time she leaves her rental unit, she has her recording turned on.

Tenant's response –

The tenant submitted in writing they were going for coffee and noticed that SD was sitting in her car, and said the tenant was "carrying on". The tenants wrote that they thought SD was stuck and went over to help, as there was "close to a foot of snow". The tenant submitted that SD immediately took out her phone, yelling that she was recording them.

The tenant said that SD gave him the finger and she needed to get a mental health professional. The tenant questioned why there was not a recording from the next day, January 5, 2022, and asserted that the landlords have never talked to them to get their side of things.

The tenants wrote that they believe the landlord is trying to evict them as they have complained about a barking dog and because they were supportive of another tenant who was also annoyed by the noise violation.

The tenant said the RCMP did not write a report and just told them to stay away from SD.

The tenant testified that when they moved into the rental unit, they became good friends with D and C, they were together all the time. Then suddenly, last summer, D and C just stopped talking to them and they did not understand why.

The tenant testified that they have known the other tenant, EA, who bought their van for years. The tenant said the matter at issue between EA is personal and that EA is lying.

The tenant said that SD is a liar as they are no threat to anyone.

Landlord KK –

The landlord said it was the tenants' behaviour that has caused the warning letters and the Notice to be issued.

Analysis

I have carefully reviewed and considered the relevant oral and written evidence submitted by the parties.

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. Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove the grounds on which the Notice is based, on a balance of probabilities, meaning the events as described by one party are more likely than not.

The Notice was issued to the tenants pursuant to section 47 of the Act. I have reviewed a copy of the Notice and find it complies with section 52 of the Act, as to form and content. The landlord did mark through the word "One" on the title page of the Notice, and wrote in the words "3 Months notice". I find this did not invalidate the Notice, as I find it was in recognition of the landlords providing an end of tenancy date giving a full, three months in which to vacate, instead of one month.

Section 28 of the Act states that all tenants are entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference.

The evidence showed that the tenants were provided written warning on August 28, 2021. In this letter, the tenants were instructed to mind their own business and not bother other people, among many other things. The letter outlined many instances that the tenants had interfered with the other tenants.

The landlord submitted that the tenants have continued to disrupt other tenants' quiet enjoyment, by calling one tenant vulgar names when they see her and staring menacingly at other tenants and the landlord. Additionally, the landlord said she witnessed the tenant's aggressive behaviour towards another tenant while the tenant was paying their rent.

I gave great weight to the landlord's witness' testimony. I prefer the testimony and documentary evidence of the witness, in part, because it was delivered in a forthright, consistent, and direct manner. I found the witness' testimony was more reasonable in the circumstances. The witness testified that she became scared of the tenant when he approached her car one evening, January 4, 2022, and peered in her passenger side window and began making rude hand gestures. The tenant/witness said that the tenant's behaviour frightened the tenant/witness. Directly following that, the witness said that the tenant continued to intimidate her by getting in his vehicle and shining the high beam headlights into the witness car, while she sat there frightened. The following day, the witness said the tenant stepped into her personal space with a menacing look.

I find the statements of the tenants that all the other tenants were liars or lying to be self-serving, not backed by evidence, and not believable.

Overall, I found the witness' and landlords' versions of events had the "ring of truth".

Based on the above, I find the landlord's evidence substantiates that the tenants, have seriously impacted the quiet enjoyment of the other tenants of the residential property.

Given the above, I find the landlord has submitted sufficient evidence to prove on a balance of probabilities that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord.

As a result, I **dismiss** the tenants' application requesting cancellation of the 1 Month Notice, without leave to reapply, as I find the 1 Month Notice valid, supported by the landlord's evidence, and therefore, enforceable. I therefore uphold the Notice.

Under Section 55(1)(b) of the Act, if a tenant's application to cancel a Notice has been dismissed, I must grant the landlord an order of possession.

I find that the landlord is entitled to, and I therefore grant, an order of possession for the rental unit effective **May 1, 2022, at 1:00 p.m.**, the effective date of the Notice.

The order of possession is included with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

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

Conclusion

The tenants' application is dismissed, without leave to reapply, as I find the landlord's Notice valid, supported by the evidence and therefore, enforceable.

The landlord is granted an order of possession of the rental unit effective at 1:00 pm, on May 1, 2022.

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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 21, 2022

Residential Tenancy Branch