



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing. One of the tenants and the landlord gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

During the course of the hearing I determined that the parties exchanged evidence, with the exception of a tenancy agreement provided by the tenants. All evidence except the tenants' copy of the tenancy agreement has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2020 and the tenants still reside in the rental unit. Rent in the amount of \$1,750.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$875.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The rental unit is the upper level of a house, and a basement suite is also tenanted; the landlord does not reside on the property.

The landlord further testified that on February 13, 2022 the landlord served a One Month Notice to End Tenancy for Cause to the one of the tenants by email. A copy of the Notice has been provided by the tenants for this hearing and it is dated February 13, 2022 and contains an effective date of vacancy of March 13, 2022. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Basically, the tenant in the basement suite sent text messages constantly to the landlord about smelling smoke from the upstairs tenants. The basement suite tenant has 2 young kids. The major issue is cigarettes and the smell of marihuana, as well as excessive noise after 10:00 p.m. with constant music being played by the tenants. The landlord is not certain if the tenancy agreement prohibits smoking.

Some of the complaints are constant about coughing and noise, and other tenants cannot sleep; it's usually about music and the kids in the basement suite have to go to school, but are being disturbed. Also a neighbour who does not reside on the rental property also called the landlord multiple times about music past 10:00 p.m., and the by-law says no excessive noise after 9:00. Text messages provided by the landlord for this hearing are from the tenant in the basement suite. It was always an issue, but not this bad. Previous tenants who resided in the basement suite were more tolerant. The new tenants in the basement suite won't tolerate it.

The tenants also have a cat, and the tenancy agreement specifies that pets are prohibited.

The landlord's witness is a neighbour who resides next door, not on the rental property, who testified that last year the witness got into an altercation with the tenants, who smoke cigarettes and marihuana and make constant noises; coughing and gagging, which is gross, as well as loud music late at night sometimes until 11:00 p.m. or later in the summer.

The tenant (FW) testified that the landlord's witness moved in with a person next door who has constantly harassed the tenants and got the landlord's phone number, and

started phoning the landlord, and the landlord takes the calls. The neighbours make stuff up and complain to the landlord, and out of the blue the landlord calls saying that he's evicting the tenants based on what the neighbour next door said. It's questionable how that neighbour would know if the tenants smoked inside. Then the landlord brought up the tenants in the basement suite. The tenants haven't smoked inside since the 1990's.

The neighbour threatened to kill the tenants so police were called.

The tenants should not be evicted; the landlord should be thankful that the tenants are paying the landlord's mortgage.

LANDLORD'S SUBMISSIONS:

Basically, the landlord's problem is ongoing issues; never ending, and it shouldn't be that difficult. The landlord receives constant calls from neighbours and the tenants in the basement suite.

TENANTS' SUBMISSIONS:

The next door neighbour is the main issue and that person doesn't live on the rental property and has malicious intent. The landlord should block her number. It's crazy, the tenants have done nothing wrong, and the landlord doesn't want to deal with the neighbours.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) provided by the tenants, and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The *Act* specifies how a tenancy ends, and in this case, the reasons for issuing it are:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The next-door neighbour is not another occupant, nor the landlord.

The landlord testified that the by-law says no excessive noise after 9:00. I find that questionable; usually a by-law specifies 11:00 p.m. and the landlord has not provided any evidence to support the testimony.

One of the tenants testified that the landlord should be thankful that the tenants are paying the landlord's mortgage. I find that to be equally questionable; I am not satisfied that the tenants have any idea whether or not the landlord has a mortgage. The tenancy agreement is a contract whether or not there is a mortgage.

The landlord also testified that the tenants have a cat which is prohibited under the tenancy agreement. The landlord has not provided a copy of the tenancy agreement; and despite whether or not that term exists, that has nothing to do with the reasons for issuing the notice to end the tenancy.

I have reviewed the evidentiary material, and there is nothing in the evidence proving that smoking is prohibited. The only other evidence provided by the landlord to substantiate the issuance of the Notice are text messages from other residents of the rental property about smoking. Since the tenancy agreement does not contain any prohibition about smoking, I am not satisfied that the landlord has established any of the reasons for issuing the Notice, and therefore, I cancel it.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlord in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated February 13, 2022 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: May 25, 2022

Residential Tenancy Branch