



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Real Property Management Executives
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT
 OPC, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord which have been joined to be heard together. The tenants have applied for 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. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenants.

Both tenants and an agent for the landlord company attended the hearing and each gave affirmed testimony. The tenants also called 1 witness, the tenants' son, who also gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which 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 given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

Background and Evidence

LANDLORD'S EVIDENCE:

The landlord's agent (hereafter referred to as the landlord) testified that this fixed-term tenancy began on September 1, 2021 and reverts to a month-to-month tenancy after

August 31, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$1,700.00 is payable on the 1st day of each month and there are no rental arrears. On August 28, 2021 the landlord collected a security deposit from the tenants in the amount of \$850.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the upper level is also rented.

The landlord further testified that on January 27, 2022 the landlord posted to the door of the rental unit a One Month Notice to End Tenancy for Cause, and a copy has been provided by the landlord for this hearing. It is dated January 27, 2022 and contains an effective date of vacancy of February 28, 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;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyments, security, safety or physical well-being of another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

On November 16, 2021 a domestic dispute between the tenants escalated and vulgar language was used. An audio recording has been provided for this hearing. The landlord testified that the conversation went through the entire house while the tenants were fully aware of that. The landlord has concerns of the safety of other residents.

December 14, 2021 the residents in the upper unit reported to the landlord displays of aggression and intoxication by the tenant husband; that the tenant was in his vehicle and the window was smashed. The resident in the upper unit cleaned up the glass for safety reasons.

On January 23, 2022 it was brought to the landlord's attention that local RCMP were dispatched for the 3rd time due to a fight breaking out between the tenants.

There has been a pattern of aggression, intoxication and vulgar language to the tenant wife and to the resident and child in the upper unit. No warning or caution notices have

been issued to the tenants. After discussing the evidence that was brought to the landlord and having a conversation with someone at the Residential Tenancy Branch about the landlord's options, the landlord deemed it unnecessary to have any prior conversations with the tenants. The residential Tenancy Branch person said that if the landlord felt it necessary, a notice to end the tenancy could be posted if evidence had been obtained.

With respect to illegal activity, police are familiar with the tenant and they have been at the rental home several times about intoxication and domestic assault.

The pattern has continued since the One Month Notice to End Tenancy for Cause was issued. On March 1, 2022 another argument ensued and was recorded by the resident in the upper level. The tenant made threats toward his spouse and the residents in the upper level, including telling the resident in the upper level that she would also be evicted and called her a bitch.

The landlord received a 5-page (2,750 word) email from the tenant using threatening language toward the landlord, the brokerage and the owner, such as, "This is as far as my kindness will go ... I will not rest..." The tenant has resorted to threats, and a copy of the email has been uploaded for this hearing late to establish a pattern, which is why the landlord seeks an Order of Possession.

TENANTS' EVIDENCE:

The first tenant (DJM) testified that he's been vilified falsely with misleading statements by the resident upstairs, such as that the tenants don't take care of the property, accuses the tenant and calls the tenant an unemployed drunk. The resident upstairs shows up at the tenants' door giving them gifts and cards and without the tenants' knowledge sends complaints to the landlord and then returns with food and goodies, even after her email to the landlord. She has also been the one who called cops each time they came.

The tenant has never abused his wife. The tenant wife had breast cancer surgery in December, 2021, and it is highly offensive that the tenant be accused of assault. The tenant wife has "Chemo brain" causing her to become irritable, angry and causes arguments sometimes. The sound insulation is significantly inadequate and both families hear things they don't want to hear. The tenants keep to themselves, and the tenant has never been intoxicated in common areas, only in his home.

The window incident described by the landlord never happened. There had been a massive snowfall, and when the tenants moved to the rental home the back drivers side window came off the track and the tenant slammed the door and the window broke. Most of the glass went inside onto the back seat. The small amount of glass was a dustpan

amount and the tenant wife cleaned it up, not the resident in the upper level. The resident in the upper level saw the tenant wife cleaning and offered to help. That was during the 2nd week of September, 2021 and a copy of the receipt for its repair has been provided for this hearing. No such incident took place, and the resident in the upper level lied through her teeth.

The resident in the upper level has also included the tenants' kids in her complaints, which also are not true. The tenants' kids do their chores, such as taking out the garbage and yard care, and all of the snow removal in the massive driveway.

The resident in the upper level has a personal vendetta, and everyone has been deprived of sleep. She does nothing to calm her kids, and since the landlord served the One Month Notice to End Tenancy for Cause disturbances from the upper level have increased. The tenant has also called police about partying upstairs and 13 vehicles in the parking area; the tenants couldn't even watch TV.

The email that the tenant sent to the landlord was a friendly attempt to show who the tenant really is as a person. It was not threatening, other than to mention a lawsuit if the tenants get evicted, putting the landlord on notice that the tenants will take further action. The upper resident's characterization is incorrect.

In September the upper resident invited the tenants for coffee and made a tearful plea and confession about a bed bug infestation and said that the tenants would have to move out to deal with it. The tenants had to go through the extermination process and be out for a few days. The resident in the upper level has caused the tenants significant suffering, with no peace, and paints an image of the tenant being an unemployed drunk and woman and child abuser. It made the tenant very angry. If the tenant had known complaints were being made, he would have made attempts to clear it up.

The resident in the upper level moved her security camera to face the tenants' entrance to the deck and moved other one from one corner to another pointing to the tenants' parking.

The tenant would prefer a peaceful resolution. This is possibly racially motivated; the tenants are First Nations, and being painted a drunk Indian is very offensive. The tenant has never threatened and the tenants' rights have not been protected by the landlord.

Police did welfare checks basically, and on the 3rd time they took the tenant downtown and brought the tenant back home. The tenant has been charged, but not convicted.

The second tenant (KRG) testified that the tenants are a good family and have never gone through anything like this before; it's extremely upsetting that a neighbour says such things about the tenants. This is very overwhelming.

The landlord's evidence includes an email from the resident in the upper level saying that she can provide suitable tenants, which was the 2nd time she mentioned getting the tenants to move out.

Further there are constantly people upstairs and 8 or 9 cars in the driveway, people in and out, causing the tenant to believe she wants her family to move in and wants the tenants to move out.

The tenants are hard-working, their kids are good, and the tenants do what they can on the property. The tenant's husband has never been physical toward the tenant or kids, so the upper resident's statement is a lie. The tenants have been together almost 15 years, and the tenant husband is a good father and husband, but the tenants were going through a rough year and it hasn't been easy.

The tenant also testified that she cleaned up the broken glass, not the resident from the upper level. She offered to help, but that was it.

The tenant's witness is the tenants' 15 year old son who testified that while trying to watch TV there are noises from the kids upstairs stomping, screaming and the witness' bedroom is under another bedroom. The witness can also hear phone calls, alarms and lots of conversations. The alarm goes off at 5:00 a.m. affecting the witness' sleep, and weekends kids are up early and running around.

The tenants shovelled each time it snowed, and the witness testified that he would be out there sometimes an hour, and each time it snows, it's part of his chores as well as weed-eating and picking dandelions.

The witness also testified that there is a lot of construction work stuff outside on or near the witness' bedroom window, so he can't open it. It belongs to the upper level residents and all along the side of the house. The witness hasn't asked that it be removed, but has removed it a few times himself and it got replaced.

The resident in the upper level has been friendly and delivered gifts on multiple occasions, and on another occasion offered the witness and his sister candy.

The tenants moved to the rental unit not too long ago, and personally it will affect the witness if they are required to move. The witness has been trying to get to know people and get a job and fit in, and does not want to struggle with that again.

The witness' father has never been physically abusive to the witness or to the witness' mother. He may say things, but there is no physical abuse on any of the family. Any punishment by the witness' dad is verbal and non-abusive.

SUBMISSIONS OF THE LANDLORD:

The landlord has provided images of the driveway and there is no construction material on the side of the house. The parking lot does not have upwards of 10 vehicles.

The landlord was not made aware of claims of noise from the upper level residents, and received the audio last week.

The landlord didn't know anything about bed bugs either; there was no communication about it and the landlord has had no opportunity to act on any information. It was only brought to the landlord after the One Month Notice to End Tenancy for Cause was served.

The notice to end the tenancy was issued based on the language of the tenant, and the tenant has confirmed that he was arrested and has been charged.

SUBMISSIONS OF THE TENANTS:

The landlord says he didn't know about bed bugs, yet the tenancy agreement clearly states it should be reported immediately to the landlord. The resident in the upper level said she would notify the landlord, and the tenants allowed that. On March 1, 2022 the tenant emailed the landlord to inform that the tenants were inconvenienced by a bed bug infestation, how to deal with it, and what the tenants had to do.

There are no vehicles in the landlord's photographs, but that's a one-off. Another in March shows the tenants' vehicle boxed in.

The landlord gave false information; the southwest side of the house is set up with warehouse shelving blocking the tenants' bedroom window and the window of the tenants' son. There is a massive amount of work equipment almost the full length of the house. The resident in the upper level provided the landlord with misleading information. The side of the house that the landlord provided is the other side of the house where there is no equipment. There is a significant amount.

The tenant has not been convicted of any charges, and it is completely made up. The tenants have arguments like others, and swear but a result of "Chemo brain." There have never been any complaints or a notice to end a tenancy in any previous rental.

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 (hereafter referred to as the Notice), 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.

I agree with the information provided to the landlord by the Residential Tenancy Branch that written warnings or caution notices are not necessary for the reasons set out in the Notice, however doing so may have had some positive results short of eviction. The landlord testified that the Notice was issued as a result of hearing the audio.

I have reviewed all of the evidentiary material, including audio provided by the landlord and by the tenants. I have also read the statements and letters provided for this hearing, and considering the statements and the testimony of the tenants who both testified that there is little or no soundproofing between the 2 floors, I find that there is just as much noise coming from the upper level as the lower level. That is also exhibited by the tenants' email to the landlord company seeking permission to hang a blanket with tacks to muffle the noise from the upper level.

The first audio recording provided by the landlord, dated February 11, 2022 sounds to me like people talking, not yelling or swearing, and certainly there is no soundproofing. Another audio certainly has some foul language. However, none of the evidence supports the landlord's testimony that any threats to the resident and child in the upper unit have been made by the tenants.

I am also satisfied that the upper level resident has not been truthful with the landlord, including withholding information about a bed-bug infestation. The tenants believe the upper level resident has a motive, being to have the lower level suite vacant for tenants that the upper level resident would prefer. The landlord was told that the tenant smashed his car windows while drunk, which is denied by the tenants. The tenant's statement also indicates that the incident took place on September 15, 2021, not on December 14, 2021 as claimed by the upper level resident. Also, it was only 1 window

and a copy of a receipt for its repair has been provided for this hearing by the tenants. Further, the tenants have both testified under affirmation that the upper level resident did not clean up the glass as she indicated to the landlord.

The tenants have also provided photographs of building materials and other items placed up against the house, which the landlord denied. I accept the testimony of the tenants' son, who testified that the materials were against his bedroom window. He also testified that his parents are not violent, and that his father has never been violent with his mother or himself. He gave matter-of-fact testimony, without slandering anyone, and I found his testimony to be truthful, without any malice or ill-will.

Although the male tenant testified that he was charged with an offence, no one has been convicted of an offence. No one has provided any testimony with respect to what he has been charged with.

In the circumstances, I accept that the audio provided by the landlord contain foul language, but I am not satisfied that the resident in the upper level of the home has been at all truthful, and given that the landlord has failed to give any warnings or investigate any allegations, the tenants' defence to the One Month Notice to End Tenancy for Cause has been set out. Therefore, I cancel it and the tenancy continues.

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 that amount in favour of the tenants as against the landlord, 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 landlord's application is hereby dismissed without leave to reapply.

The One Month Notice to End Tenancy for Cause dated January 27, 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 17, 2022

Residential Tenancy Branch