



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trafalgar Management In Trust
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47’
2. An Order for the Landlord’s compliance – Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witnesses gave testimony under oath.

Preliminary Matter

The Landlord states that all their evidence was provided in person to Tenant MA on June 28, 2022. The Tenant states that they were out of town on that date and only found the evidence propped on their door on July 2, 2022. The Tenant states that despite this late receipt they are prepared to proceed and do not seek an adjournment.

It is noted that while the Tenants’ claim for an order of compliance appears to refer to the claim to cancel the notice to end tenancy it does not set out any particulars on this claim other than “unfounded”.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be

dismissed with or without leave to reapply. As there are no particulars on the claim for compliance and no submissions on its relevance to the claim to cancel the notice to end tenancy, I find that the claim for the compliance is not related to the primary matter of whether the tenancy will end, and I dismiss this claim with leave to reapply should the tenancy continue.

Issue(s) to be Decided

Is the notice to end tenancy valid for its reasons?

Is the Landlord entitled to an order of possession?

Background and Evidence

The following are agreed facts: the tenancy started on April 1, 2021. Rent of \$1,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$600.00. The Tenants were given on one month notice to end tenancy dated March 9, 2022 (the "Notice"). The reasons for the Notice are that 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, or
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

The Notice sets out details of the cause.

The Landlord states that since taking over management of the building on October 15, 2020 they have received numerous oral complaints from other tenants about the Tenants causing disturbances. The Landlord states that they started collecting written complaints and that between December 28, 2021 to March 9, 2022 they received seven complaints. The Landlord states that since serving the Notice they have received an additional five complaints. The Landlord confirms that the details of the complaints provided as evidence are, among other details, that the Tenants are engaging in

outrageous screaming matches and fights between themselves with the use of abusive language, that the Tenant PR has assaulted Tenant MA on a number of occasions, and that that Tenant PR has been aggressive, has screamed and used vulgar language towards other tenants. The Landlord states that although most of the complaints have come from a tenant residing above the Tenants, 4 other tenants have also made the complaints. The Landlord states that the police have been called a number of times.

The Tenant states that the allegations made by the other tenants are false and that the police report provided by the Landlord is false. Tenant PR states that they have not assaulted Tenant MA. The Tenant states that they have friends and socialize with some of tenants in the building and are greeted by other tenants entering the building while sitting on their deck. The Tenants state that there is no fighting, screaming or yelling coming from their unit. Tenant MA states that they love Tenant PR and that they have been in a relationship for 25 years.

The Tenants called three witnesses. The first Witness states that although there is a complaint made about the Tenants about loud parties that occurred, no such party occurred as this Witness was staying in the unit for a week during that time while the Tenants were out of town. The first Witness states that while Tenant PR was charged with the assault of Tenant MA from an incident that occurred in January 2021, these charges were dismissed. The second Witness states that the tenant in the upper unit makes noise and that they have no evidence of any disputes between the Tenants. The third Witness states that while they have spent a lot of time at the unit, they have never witnessed any fights or assaults and has never seen Tenant MA get hit.

If the Notice is found to be valid the Landlord seeks an order of possession for as soon as possible and no later than July 31, 2022.

Analysis

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if 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, or
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The Tenants' evidence is only that of denial of the Landlord's evidence of complaints. One of the Tenant's Witnesses provides evidence that Tenant PR was charged with assaulting Tenant MA, which I consider supports on a balance of probabilities that the assault occurred and therefore contradicts this Tenant's denial of ever assaulting Tenant MA. This tends to reduce the overall credibility of the Tenant's testimony. The Landlord's evidence is supported by highly persuasive complaints of significant disturbances of the other tenants that includes at least one assault by Tenant PR on Tenant MA. I consider such behavior to be highly disturbing to any persons hearing the assault take place or witnessing the outcome. For these reasons I find on a balance of probabilities that Tenant PR has significantly interfered with or unreasonably disturbed another occupant of the residential property. The Notice is therefore found to be valid, and I dismiss the Tenants' application in its entirety.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the contents of the copy of the Notice confirmed to have been received by the Tenants, I find that the Notice complies in form and content. As the Notice has been

found valid, I grant the Landlord an order of possession effective 1:00 p.m. on July 31, 2022.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on July 31, 2022.

The Tenants must be served with this **Order of Possession**. Should the Tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: July 11, 2022

Residential Tenancy Branch