



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE SOCIETY OF HOUSING
OPPORTUNITIES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants April 1, 2022, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause;
- An order suspending or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on July 22, 2022, and was attended by the Tenants, two agents for the Landlord (the Agents), and two witnesses for the Landlord. All testimony provided was affirmed. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. As the Agents acknowledged service of the Notice of Dispute Resolution Proceeding Package, and raised no concerns regarding the service method or date of service, I find that the Landlord was therefore sufficiently served for the purposes of the *Act* and the Rules of Procedure. The hearing therefore proceeded as scheduled.

Although the Tenants acknowledged receipt of the Landlord's documentary evidence, the Agents denied receipt of the documentary evidence before me from the Tenants, stating that they were not served with evidence but rather information on how to access the evidence on a shared online drive. The Agents stated that they had concerns about attempting to access this evidence online so they did. Regardless, the stated that they are not concerned with receipt of the Tenants' documentary evidence and agreed to its

acceptance for consideration, despite not having viewed it. As a result, I accepted the documentary evidence before me from both parties for consideration.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over myself and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

In their Application the Tenants sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the remaining claims for an order suspending or setting conditions on the Landlord's right to enter the rental unit and an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement are not sufficiently related to the One Month Notice, I exercise my discretion to dismiss these claims with leave to reapply. This is not an extension of any statutory time limit.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55(1)?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties disputed whether the Tenants had significantly interfered with or unreasonably disturbed other occupants of the residential property, and/or breached a material term of the tenancy agreement relating to noise disturbances. The Agents provided a detailed history of the noise complaints received, copies of correspondence sent to the Tenants regarding noise disturbances, a copy of the tenancy agreement which they state contains a material term under section 19, among other things, and called two witnesses who live together directly below the Tenants.

The Witnesses and the Agents argued that noise disturbances have been ongoing since August of 2017, and that complaints have been made numerous times from occupants of the residential property, as well as off-site neighbours, since January 4, 2022. The Witnesses characterized the disturbances as frequent and significant and argued that they have results in loss of sleep, lost wages, and a significant reduction in the quality of their life and their enjoyment of the rental unit.

The Tenants denied causing any noise disturbances and stated that they have been blamed for such things as music from other people's cars, food delivery persons delivering food to other units, and even thunder. They stated that the Witnesses and another complaint are significantly exaggerating things, if not outright lying, and argued that the Witnesses and the other on-property complainant are friends, and did not start complaining until after the RCMP were involved at the Tenants' request regarding an incident with the complainants son. The Tenants submitted numerous documents and digital evidence in support of their testimony, including a voicemail from the RCMP with regards to the above noted incident.

The parties agreed that the One Month Notice was posted to the door of the rental unit on March 25, 2022, and the Tenants acknowledged receiving it that date. The One Month Notice is signed and dated March 25, 2022, has an effective date of April 30, 2022, and states that the tenancy is being ended because 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 and/or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Tenants sought cancellation of the One Month Notice and recovery of the filing fee.

Analysis

Sections 47(1)(d)(i) and 47(1)(h) of the *Act* state 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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Based on the documentary evidence and the affirmed testimony of the parties, I am satisfied that a One Month Notice which complies with section 52 of the *Act*, was served on the Tenants by the Landlord on March 25, 2022.

As Branch records indicate that the Tenants filed the Application seeking cancellation of the One Month Notice on April 1, 2022, I find that they disputed it within the legislative time period set out under section 46(4) of the *Act* and therefore conclusive presumption does not apply.

Although the Agents called two witnesses (the Witnesses), and provided a detailed history of noise complaints against the Tenants going back to August of 2017, as well as copies of correspondence sent to the Tenants regarding noise complaints, I am concerned by the Testimony of the Agents that they themselves have never heard the noise disturbances described, despite the significant length of time they have allegedly been ongoing. I am further troubled by the fact that although the Witnesses testified that the alleged ongoing noise disturbances are frequent, have been going on for years, are sometimes lengthy in duration, and are significantly impacting both their health and their quiet enjoyment of the rental unit, not once since they allege that the noise disturbances began in August of 2017, have they requested that an agent for the Landlord attend the property while the noise disturbance was occurring to observe it, record it, and/or stop it.

Further to this, the Tenants argued that allegations of the Witnesses, and another occupant of the property who is good friends with the Witnesses, are exaggerating the frequency, duration, and significance of any noise disturbances caused by them, if any. The Tenants also argued that the complaints arose only after they had to get the RCMP involved about disturbances caused by one of the complainants, something I find

compelling given the voicemail recording from the RCMP submitted for my consideration.

Overall, I find that the Landlord's evidence, although thorough, lacks the type of corroborative evidence and documentation one would expect from a situation such as this, such as audio/video recordings demonstrating the level of the noise disturbance and its origin. Given this, and the testimony of the Tenants, I find that I am simply not satisfied at this juncture that noise caused by the Tenants, if any such noise disturbances exist, constitutes a breach of a material term of the tenancy agreement or unreasonable disturbance under the *Act*. As a result, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice.

Conclusion

The Tenants' Application seeking cancellation of the One Month Notice is granted, and I order that the tenancy continue in full force and affect unless or until it is ended by one or more of the parties in accordance with the *Act*.

The Tenants may deduct \$100.00 from the next months rent or otherwise recover this amount from the Landlord.

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: July 26, 2022

Residential Tenancy Branch