



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, the Tenants, and their Legal Counsel attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by email on March 23, 2022, Tenants confirmed receipt, deemed received on March 26, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package served by email on April 7, 2022, deemed received on April 10, 2022;
- the Tenants' first evidence package served by email on June 30, 2022, deemed received on July 3, 2022; and,
- the Tenants' second evidence package served by email on July 4, 2022, deemed received on July 7, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

RTB Rules of Procedure 7.4 states that evidence must be presented. During the hearing, this Rule says:

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on October 11, 2021. The fixed term ended on October 31, 2022, then the tenancy would continue on a month-to-month basis. Monthly rent is \$3,900.00 payable on the first day of each month. A security deposit of \$1,950.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reasons the Landlord was ending the tenancy was because the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord, the Tenants or a person permitted on the property by the Tenants has caused extraordinary damage to the rental unit or the property, and, the Tenants have failed to comply with a material term of the tenancy agreement, and have not corrected the situation within a reasonable time after the Landlord gives written notice to do so. The effective date of the One Month Notice was April 22, 2022.

The Landlord's Agent stated that the instruction to issue the One Month Notice came from the strata council, but the Landlord knows the hearing was happening and they had no position. The Landlord's Agent provided further details of the causes to end this tenancy as "*There are ongoing complaints/bylaw violations.*" The Landlord's Agent testified that there are noise complaints, and damage to a sandwich board sign going into the parking garage. The Tenants did not dispute the damage to sandwich board sign, and the Tenants paid for it.

The Landlord's Agent testified that occupants in the residential property have made noise complaints because they cannot sleep, due to loud music and profane language. A complaint was issued on March 21, 2022 for a noise complaint the night before. On May 11, 2022, the complaint was rescinded, and the fine was reversed as it was noted in error. This March 21, 2022 complaint was what instigated the issuance of the One Month Notice.

The Landlord's witness, who is the strata council president, said there were seven violations prior to the Tenants being served the One Month Notice. The witness said the Tenants breached a material term of their tenancy agreement, noise complaints were made about the Tenants, a visitor of the Tenants rode over a sign at an entrance to the parking garage, and there was one smoking violation. Bylaw violation notices were issued to the owner and the Tenants of the rental unit.

The witness guessed that the November 10, 2021 letter was the breach letter issued to the Tenants. The letter was signed by the Senior Strata Manager, and the alleged violation was noise occurring by the Tenants on October 29, 2021. The letter states the Tenants have breached Section 4 of the Strata Corporation Bylaws to do with "*Use of property*".

A letter dated January 31, 2022 was sent to the owner of the strata property citing six noise complaints, and one smoking violation in the courtyard of the residential property.

A letter dated February 9, 2022 was sent to the Tenants alleging that a guest of a different unit (not the Tenants' unit) in the building "*came down the middle of the parkade ramp instead of going down one side and ran over the sandwich board at 12:31 on February 6th.*" The letter continued stating that a sign will be reordered and charged back to [that other unit]. The parties gave evidence that the invoice for the sandwich board replacement was paid by the Tenants.

The Landlord's Agent testified that there have been numerous bylaw violations and noise complaints. The Landlord's Agent claims the Tenants responded to some, agreed to some, but their behaviour has not changed. The witness argues that it is clear to council that the Tenants are not changing their ways, and they are a constant disturbance to occupants of the building. The witness stated that audio recordings directly contradict the Tenants' responses that they were quietly watching a movie. The Landlord's evidence does not include audio recordings.

The Tenants provided a written response to the strata council's letter about the October 29, 2021 alleged noise complaint. The Tenants did not receive a reply back.

The Tenants admitted to making noise when returning home on December 4 and 6, 2021. It was during birthday celebrations of two of the Tenants. However, the Tenants stated they were not playing loud music, and they do not host parties as they know this would violate the residential property's bylaws. The complaint contained allegations that "*things [were] falling down*", but the Tenants deny yelling, partying, or dropping things on the floor.

The Tenants submit that the broken sandwich board does not qualify as extraordinary damage. An invoice totalling \$2 was sent to the Tenants, and they paid to replace the sandwich board sign.

The Tenants received a letter from the strata council that one of the Tenants was observed smoking on January 20, 2022 in the courtyard. The letter does not specify which Tenant was the offending smoker, and the Tenants' written submissions state the Tenants do not smoke cigarettes.

The Tenants state the strata council sent a letter claiming to find car keys, and bank cards with a name that is not any of the Tenants' names. There is no occupant in the rental unit with that name.

The Tenants uploaded a letter from their neighbour, the only other resident on the same floor as the Tenants, who had no complaints about the Tenants making noise or any other disturbances.

Analysis

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. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this matter. It states:

Landlord's notice: cause

- 47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

- (d) *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,*

...

- (f) *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*

...

- (h) *the tenant*

- (i) *has failed to comply with a material term, and*
(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*

- (a) *not earlier than one month after the date the notice is received, and*

- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord's One Month Notice was deemed received on March 26, 2022. Section 53 of the Act allows for an automatic correction of an effective date. The correct effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Therefore, the correct effective date is April 30, 2022. I find, after the correction, that the Landlord's One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on March 31, 2022 which was within 10 days after the date the Tenants received the One Month Notice pursuant to Section 47(4) of the Act.

The Landlord's Agent testified that occupants in the residential property have made noise complaints about the Tenants. The witness who is the strata council president described that the Tenants are making "*constant*" noise in the residential property. The Landlord's Agent stated that other residents have made noise complaints because they cannot sleep, due to loud music and profane language. Aside from the Tenants admitting to be loud coming back into the building on December 4 and 6, 2021 after birthday celebrations, I find the Landlord's evidence to be overly generalized, as I do not believe the Tenants are making *constant* noise. Based on the totality of the Landlord's evidence presented in the hearing, I do not find that the Tenants have significantly interfered with or unreasonably disturbed another occupant of the residential property. The Tenants have not significantly interfered with or unreasonably disturbed the Landlord of the rental unit.

The Tenants' guest apparently ran over a sandwich board sign coming into the parking garage; however, I do not find that this constitutes extraordinary damage. The Tenants paid the \$256.86 for the replacement sign. I find the Landlord has not proven cause to end this tenancy in this regard.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The Landlord did not point to a term in the Tenants' tenancy agreement that was breached. The Landlord has not proven that a material term of that agreement has been breached; therefore, they have not proven cause, on a balance of probabilities, to end this tenancy.

I cancel the Landlord's One Month Notice as I do not find cause to uphold it. The Tenants' application to dismiss the One Month Notice is granted. The tenancy shall continue until it is ended in accordance with the Act.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. The Tenants may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

Conclusion

The Tenants' application to cancel the Landlord's One Month Notice is granted.

The Tenants may withhold \$100.00 from one month's rent to recover their application filing fee.

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: August 03, 2022

Residential Tenancy Branch