



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PETER WALL YALETOWN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT, OPC, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On May 6, 2022, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On May 19, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and Z.M. attended the hearing as an agent for the Landlord. She advised that the Landlord is a company as noted on her Application. As such, the Style of Cause on the first page of this Decision has been amended to correct the named Respondent on the Tenants’ Application.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant E.P. advised that their Notice of Hearing and evidence package was served to the Landlord's office in person on May 20, 2022; however, his testimony regarding the evidence was not consistent or reliable. Z.M. confirmed receiving the Notice of Hearing package, but stated that there was no accompanying documentary evidence. Based on the testimony of the parties, I am satisfied that the Landlord was duly served the Tenants' Notice of Hearing package. However, I am not satisfied that the Tenants' evidence was included in this package. As such, I have excluded this evidence and will not consider it when rendering this Decision.

Z.M. advised that she served a separate Notice of Hearing and evidence package to each Tenant by registered mail on June 3, 2022. She stated that one package was delivered and that one was refused and returned to sender. She also submitted that the Landlord's digital evidence submitted was served to the Tenants by email at some point, but she was not exactly sure when this was done. The Tenants confirmed that one of these Notice of Hearing and evidence packages was accepted, while the other was refused. As well, they stated that they did not receive the Landlord's email containing the digital evidence. Based on the testimony of the parties, I am satisfied that the Tenants were duly served the Landlord's Notice of Hearing and evidence packages, despite them refusing one package. As such, I have accepted the Landlord's documentary evidence and will consider it when rendering this Decision. However, as Z.M. could not prove when or how the Landlord's digital evidence was served, I have excluded that evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?

- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2021, that the rent was established at an amount of \$3,000.00 per month, and that it was due on the first day of each month. A security deposit of \$1,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenants disputed a 10 Day Notice to End Tenancy for Unpaid Rent; however, all parties confirmed that no such notice was ever served to them. Despite the Tenants disputing the wrong notice, I can reasonably infer from their Application that their intention was to dispute a One Month Notice to End Tenancy for Cause. As such, I am satisfied that the hearing could still proceed on their Application, despite this error.

M.Z. advised that two different copies of the Notice were served to the Tenants, on April 27, 2022, by posting them to their door. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord”, because the “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 enjoyment, security, safety or physical well-being of another occupant of the landlord”, and because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The Notice also indicated that the effective end date of the tenancy was May 31, 2022.

She testified that the Tenants would have parties and make excessive amounts of noise that would disturb other residents of the building. She referenced two warning letters sent to the Tenants in October 2021 about these noise issues, and included were two emails from residents of the building complaining of the noise. She stated that despite

these warnings, the Tenants continue to engage in excessively loud activities that disturb other residents of the building. She advised that three different residents of the building have left because of the ongoing noise problems. She stated that the Tenants have also been warned verbally, but the Landlord still receives calls from residents or security complaining of the Tenants' constant noise.

Tenant P.V. confirmed their excessive behaviours, but he advised that after the two written complaints in October 2021, they stopped and "did everything in their power to reduce" any noise that they made. He stated that there were never any verbal discussions about noise issues after October 2021. He submitted that after these warnings, any guests that they had over would leave before 11:00 PM. As well, he testified that they would not play any music, that they would not go on the balcony, and that they would not open the balcony door when guests were over. He stated that they never received any complaints from neighbours.

E.P. advised that the Landlord indicated the wrong date in April 2022 of any alleged incident, and he stated that they were not home on either of those dates. He testified that when they were served the Notice of Hearing package, they were informed that it was due to them hosting parties. As well, he indicated that they have never seen a security person working in the building.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

In considering this matter, I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the Act if any of the reasons cited in the Notice are valid. Section 47 of the Act reads in part as follows:

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,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(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;

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When weighing the totality of the evidence, I note that I have before me warning letters regarding noise complaints that were provided to the Tenants in October 2021. As well, I have emails from other residents of the building, directed to the Landlord, complaining of noise caused by the Tenants, and the most recent emailed complaint was on April

23, 2022.

On the other hand, I have testimony from the Tenants refuting that they have made any noise since the warning letters, and statements that they were not there during the April 22 or 23, 2022 incident. However, they have not provided any documentary evidence to corroborate any of their submissions.

In assessing the evidence, on a balance of probabilities, I do not find the Tenants' testimony to be credible or persuasive. I find that the Landlord's documentary evidence was more consistent and compelling, and that the Tenants, more likely than not, demonstrated an ongoing pattern of deliberate and unacceptable behaviour that, even after being warned, have continued to escalate issues unnecessarily. I am satisfied that the Tenants attempted to portray an alternate series of events that were not truthful. I find that the Tenants' behaviours have, in turn, jeopardized their tenancy. As a result, I prefer the Landlord's evidence on the whole.

Consequently, I uphold the Notice for the reason of significantly interfering with or unreasonably disturbing another occupant or the Landlord, and I find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. As such, the Order of Possession takes effect at **1:00 PM on September 30, 2022** after service on the Tenants.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt outstanding.

Conclusion

The Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective on **September 30, 2022 at 1:00 PM after service of this Order** on the Tenants. Should

the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 13, 2022

Residential Tenancy Branch