



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on April 29, 2022 and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

I note that many issues were raised during the hearing; however, on matters relating to the reasons stated in the Notice will be considered.

Issues to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began on July 1, 2021 as a one year fixed term tenancy that was to end on June 30, 2022. . Rent in the amount of \$2,800.00 was payable on the first of each month. The tenants paid a security deposit of \$1,400.00.

The tenancy agreement is simply one paragraph and does not indicate any terms of the tenancy agreement other than to establish the rent payable, and the requirement to pay 60% of the shared utilities.

As there is no vacate clause that the tenants must vacate the rental unit at the end of the fixed term for the only reasons permitted under the Act, which is for landlord's use of property. I find the tenancy automatically reverts to a month-to-month agreement.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on May 31, 2022.

The reason stated in the Notice was that the tenants have:

- Tenants has allowed an unreasonable number of occupants in the unit
- 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;
- 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 or the landlord; and
- The tenant has assigned or sublet the rental unit without landlord's written consent.

At the outset I questioned the landlord on the reason that the tenant has engaged in illegal activity within the Notice. The landlord could not point to any statute of law that would be considered to be an illegal activity. Therefore, I find I do not need to consider this reason within the Notice.

The landlord testified that the tenants have had an unreasonable number of occupants in the unit and have never had their written permission to have additional occupants or sublet. The landlord confirmed that the tenant's rental unit has 4 bedrooms.

The landlord indicated that the witness DS will provide testimony on the remainder reasons within Notice.

The landlord's witness DS testified that they have been an occupant on the premises for seven years in the lower rental unit and have never had any issues with prior tenants.

DS testified that when their child wakes from night terrors or has a tantrum. The tenants will purposely stomp on the floor causing the situation to be worse when they are trying to quiet the child. The tenant stated that this has happened a hand full of times.

DS testified that on October 2, 2021 the tenants had a party, with loud music, laughing and thumping.

DS testified that on December 25, 2021, the tenant had a party with music until after 11pm and again they had a party on December 31, 2021 which lasted until about 1:00am. DS stated that the tenants' guest were outside by their door, yelling, dancing clearly intoxicated and that their partner had to tell them to stop. DS stated that they have a three-year-old who was woken up several times and they were six months pregnant at the time and this was an unreasonable disturbance.

DS testified that there have been multiple other times where when their partner would leave at 5am for work that they would be drunk on the front lawn.

DS testified that on March 28, 2022 the tenant's maybe had another party. DS later changed that testimony after the landlord gave DS information. DS then stated that the tenants were stomping at 7:15 am for 20 to 30 minutes and it sounded like they were exercising.

DS testified that the tenants also bring in pallets of wood and leave wood shavings and nails around the property which is a safety issue for their children and is like walking around a construction site.

DS testified that since the tenants have moved in there is a rat problem. The tenant stated that when the garbage bin is full the tenants will leave the garbage on the deck. DS stated that there is also a shed under the deck, that is a shared space and the tenants had taken the landlord's BBQ out to store their scooter, which one time they could smell gasoline. The tenant stated another issue is the smell of smoke coming through the vents on occasions.

DS testified that the tenants seem to run the rental unit like a hostile. The tenant stated that there was another couple living in the rental unit for a couple months and other people for two or three weeks.

DS testified that the tenant have on multiple occasions talk to us or come to their front door and putting on a disguise that they are nice.. DS stated that they are not nice people and they feel intimidated and uncomfortable.

The landlord testified that their neighbour of twelve years has called me a few times regarding noises and things that they are making. The neighbour is also upset because of rats.

The landlord testified that the tenant admitted to the party on December 31, 2021 and apologized and they were told that they had their roommate move-out.

The tenant testified that the landlord has always known that they have a roommate to help pay the rent and the landlord was fully aware of this before they signed the tenancy agreement. The tenant stated at the most they have only had three occupants, which included 2 roommates and family when coming for a visit. The tenant stated there is nothing in their tenancy agreements that prohibits them from having a roommate or that they need the landlord's written consent and this is a four bedroom rental unit and is a reasonable amount of occupants based on the bedrooms. The tenant stated they have not sublet the rental unit as they are living there.

The tenant testified that on October 2, 2021, they had a dinner party outside in the garden, and there was no loud music.

The tenant testified on December 25, 2021, they had a dinner party to celebrate Christmas and they just had a few friends. The tenant stated they do not agree that the noise was unreasonable.

The tenant testified on December 31, 2021, they were not home; however, there was a party. The tenant stated that at the time they believed the other occupants were not home as their car was not there and the lights were off. The tenant stated it was only an observation that they were not home, no one was looking through the windows. The tenant stated as soon as the other tenant knew it was a problem they had the party shutdown.

The tenant testified that the allegation made on March 28, 2022, is simply false. The tenant stated that two of them start work at 7:00 am and would have been gone from the rental unit and the other two occupants would not have been up unless getting ready for work.

The tenant testified that they are not responsible for any rat issues outside. The tenant stated they only use the shed to store their bike, everything else in the shed is not theirs. The tenant deny they leave garbage outside to attract the rats.

The tenant testified that the occupant is lodging unfounded complains because at the end of December 2021 they had contact the local bylaw department about their dog who was constantly barking, and they were issued a warning letter and the dog was found unlicensed.

The tenant testified that in March 2022 the landlord was prepared to have the tenancy continue if they paid \$1,000.00 per month more; however, they informed the landlord that they were not entitled to increase the rent above the allowable amount. The tenant stated the landlord then responded that they are not sure if they will renew the lease..

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has failed to provide sufficient evidence to show the reasons stated in the Notice.

I find having five people staying in the rental unit from time to time is not an unreasonable amount of occupants. This is a four-bedroom residence, and the tenancy agreement has no term regarding the limit allowable. This is not a sublet as the tenants are occupying the premises. Therefore, I find the landlord has not established the grounds of unreasonable amount of occupants or a sublet

I am not satisfied that the tenants have significantly interfered with or unreasonably disturbed another occupant or has seriously jeopardized the health or safety or lawful right of another occupant or the landlord for the following reasons.

In this case the landlord is attempting to end the tenancy for issues that occurred in October, and December 2021. The Notice was not issued until April 29, 2022, this is an

unreasonable delay if these incidents were truly an unreasonable disturbance by the tenants. Further, the tenants apologized to the landlord regarding the incident of December 31, 2021 and no action was taken by the landlord for four months.

Further, I am not satisfied that on March 28, 2022, that there was an unreasonable disturbance. The witness DS stated at first it was a party in the evening; however, that testimony changed only after the landlord gave DS that information that the tenants were thumping at 7:15 am in the morning and that it sounded like someone exercising. The tenant denied such an incident occurred at 7:15am. I have no supporting evidence from the landlord to prove the incident occurred or that it was ongoing.

While the witness DS provided testimony that the tenants are leaving pallets of wood, wood shaving and nails outside and this is unsafe; however, there is no evidence to support this. I would at the very least expect to see photographs.

While the witness DS provided testimony that the tenant's would purposely stomp when their child would awaken from night terrors or having a tantrum. While this would be in appropriate behaviour for the tenants to do and could be grounds to end the tenancy; however, I have no evidence to support this, no dates or times were even provided.

I have no supporting evidence that the tenants are the source of any rat infestation outside. This is simply speculating. Rats are not uncommon in the lower mainland and there could be many reasons for them to be present, such as composting in the area and finding a warm place to reside, such as a shed outside, which is the case before me. I would expect to see at the very least, a report from a pest control company showing they have determined that the tenants are the source of the infestation and that this has seriously jeopardized the health and safety of another occupant. Further, regular pest control is the responsibility of the landlord to avoid infestations from occurring.

Further, the occupant DS could be simply retaliating against the tenants due to the incident of the tenant reporting their dog to the authorities for ongoing barking, this could be a violation of the tenants right to quiet enjoyment. DS provided no supporting evidence for the landlord to rely upon, such as audio recording that were taken at the time of any noise complaint so it can be determined if it is normal household noise, or truly an unreasonable disturbance.

Further, in March 2022 the landlord had discussed a new fixed term tenancy agreement with the tenants. The rent would be increase by \$1,000.00 which was not accepted by

the tenants and contrary to the Act as this is over the allowable permitted rent increase. While the landlord may have been contemplating whether or not to enter into a new tenancy agreement with the tenants, clearly the landlord had to have known or ought to have known the issue of the tenancy at that time and it was just a few weeks later that the landlord issued the Notice, which I find the timing of the Notice questionable.

Based on the above, I grant the tenants' application to cancel the Notice. As the tenants were successful with their application, I find the tenants are entitled to recover the cost of the filing fee. Therefore, I authorize the tenants a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord in full satisfaction of the award.

The tenant are to ensure that they respect the lowers occupants right to quiet enjoyment. This could be grounds to end the tenancy if proven.

Conclusion

The tenant's' application to cancel the Notice is granted. The tenants are entitled to a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord to recover the cost of the 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 *Residential Tenancy Act*.

Dated: September 09, 2022

Residential Tenancy Branch