



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC, OLC, AAT**

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;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act;
3. An Order for the Landlord to allow access to the unit or site for me and/or my guests pursuant to Section 70 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, Landlord's Legal Counsel and three witnesses, RR, AC, JL, attended; the Tenants, the Tenants' daughter, LW, and granddaughter, MG, attended the hearing all 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 personally served on April 23, 2022, Tenants applied to dispute the One Month Notice on April 26, 2022;

- the Tenants' Notice of Dispute Resolution Proceeding package (the "NoDRP package") received May 10, 2022, and personally served after this date, the Landlord confirmed receipt of the NoDRP package, sufficiently served on May 13, 2022;
- the Tenants' testified that their evidence was included in the NoDRP package; however, the Landlord confirmed personal service of the Tenants' evidence on August 18, 2022;
- the Landlord's evidence was personally served on August 18, 2022, the Tenants' confirmed receipt of the Landlord's evidence and confirmed they were able to review the Landlord's usb evidence in the hearing.

Pursuant to Sections 71(2)(b), 88, and 89 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the One Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the One Month Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenants are not successful, 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 August 1, 2020. The fixed term ended on August 1, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,100.00 payable on the first day of each month. A security deposit of \$550.00 was collected at the start of the tenancy and is still held by the Landlord.

At the beginning of the hearing, during a time talking about service of documents, a woman's voice posing as the female Tenant in the rental unit was discussing service of documents. The Landlord confirmed receipt of the NoDRP package from the Tenants, then testified that he knows the Tenants' voices, and said the person giving evidence was MG, not the female Tenant. MG was identified as a witness and was not to be in the room at the beginning. The female voice did not confirm it was MG.

The residential property contains four units on two levels, two are side-by-side. All four units' doors enter from the back of the building, and all the units share a common greenspace outside. The Tenants live in one unit on the second floor which is a total of 918 square feet, containing two bedrooms, a small kitchen, a living room and one bathroom.

The One Month Notice stated the reasons the Landlord was ending the tenancy was because:

- the Tenant has allowed an unreasonable number of occupants in the unit;
- the Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- 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 or the landlord; and,
- the Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The effective date of the One Month Notice was May 31, 2022.

The Landlord provided further details of the causes to end this tenancy as:

Even after notice from the landlord, tenants have continually allowed another individual to stay in the apartment without landlord's permission. Witnesses state the said individual also brings her friend/boyfriend there to stay on occasion. Both of these individuals are well known to the [city] RCMP, as confirmed to me directly by officers from the local RCMP. The tenant on the lease (without permission) has been storing his large RV on the landlord's site since the fall of 2021. I have reasonable grounds to suspect according to the witnesses, that the granddaughter and/or others have been staying regularly in the RV, as well. The tenant has repeatedly said that there was no one living in the unit but that has proven to be false. Also upon entering the unit to check out the refrigerator, it was discovered that the tenant also has obtained a cat. In the tenancy agreement it specifically states – no pets.

On April 22, 2022 I was sent an audio recording and multiple texts by a witness of a violent interaction between the individuals in question at unit [##] being threatened by someone else. Not only was it loud, but threats were made by a stranger at the door saying "I'll kill you" while they tried to push through the door with excessive force. It was extremely disturbing to the members of the neighborhood who witnessed from their properties, which surround my property, and especially threatening plus disturbing to other tenants/occupants of the building. Police were not called as I was not a witness to that intimidating and life threatening interaction. Unit [##] tenant, in Nov 2021 terminated tenancy due to unsafe environment and fear for her personal safety as per her statement (police report filed as it was at same time of a B&E into that unit).

The Landlord testified that in addition to the two people in the rental agreement contract, there have been three sometimes four additional people living in or around the rental unit. Those people include two granddaughters, a boyfriend or fiancée to one granddaughter, and finally their four-year-old daughter. These additional occupants started living in the rental until around November 2021.

On January 3, 2022, a next-door resident to the Tenants, was burglarized. The Landlord received a text message from that occupant informing him of the incident. The occupant confirmed to the Landlord that she had contacted the police and asked him to change the locks on her front door which was done. That next door occupant advised the Landlord that the perpetrator of the break and enter was an occupant in the Tenants' home. That occupant also told the Landlord that she was a victim of identity theft of

which she later found out that three credit cards were fraudulently opened in her name. The bank gave the forwarding address for these fraudulently opened credit cards as LW, the mother of MG.

Several days later, the Landlord testified, the next-door resident who had been burglarized notified the Landlord that she would be ending her tenancy early. She was fearful living in the residential property due to the Tenants' extra people staying in their rental unit. The Landlord stated, "*we lost a good tenant,*" but to her, her safety was more important.

The Landlord received a recording of a violent argument that happened on January 22, 2022 in the Tenants' rental unit. In the recording can be heard the loud shouting voice of MG's boyfriend/fiancée, and MG. There were threats, such as you are "*f__kin dead,*" and lots of swearing and shouting back and forth. The Landlord stated it was extremely disturbing for other occupants, as well as neighbours of the residential property.

JL is a 71-year-old occupant of the residential property. JL has resided in the residential property for eight years with her daughter who suffers from a brain injury. She lives directly below the Tenants. She testified that five or six people reside in the rental unit above her at any given time. JL stated that the people upstairs are always threatening and intimidating her, she said, "it never stops, it just keeps going on all the time." JL said her doctor has prescribed medications to her to help her with her nerves. She maintained that the people upstairs are rude, obnoxious, and combative all the time. She said it is "*the pair of them, him ... her and [boyfriend/fiancée], and [boyfriend/fiancée] just always thinks that he's just gonna intimidate everybody even in his dress, he has bold shaven head, with a thing of hair down the middle, now that's trying to intimidate you just by the look of him.*" She does not feel safe living there. JL testified that the boyfriend/fiancée is always swearing at her, and saying words like, "*hurry up and die old lady.*" JL provided a witness letter saying she can never feel safe in the residential property, and she stated that LW came downstairs and shook the letter in her face, saying, "*what the hell is this all about.*" The Tenants had no questions of JL.

Two others of the Landlord's witnesses reside next door to the Landlord's residential property. RR testified that he has observed additional people living in the Tenants' rental unit since about mid March 2022. RR stated he has seen anywhere from five to six people residing in the Tenants' rental unit. RR told that he has been threaten or intimidated on numerous occasions by these additional people living in the rental unit. He feels nervous, experiences a lack of sleep, and lives with a bit of fear living next door

to this residential property. He closed by saying that he just wants to be left alone by these people. The Tenants had no questions of RR.

AC, partner of RR, testified that five or six people stay in the rental unit and have been coming and going since mid March 2022. She confirmed she feels threatened and intimidated by the occupants from the rental unit. She told of a time in March 2022 where she thought that the Tenants were being broken into, it was dark, and it turned out to be MG and her boyfriend/fiancée. Instead of assuring AC that her grandfather lives there, they started swearing at AC and telling her that she was crazy, she needs medication, and she had better stay on her own side of the fence. AC said they do not use their side door, they poke their heads around the side of their house, so they can go in and out of their garage without a run in with the extra occupants of the rental unit. She said she feels terrorized by these people. AC said, *"I want them to leave me alone, and leave my husband alone, and I'm shaking right now, I throw up constantly, can't sleep. It's horrible, it's horrible. I want them to leave us alone."* AC said she is scared of them in general. The Tenants had no questions of AC.

The Tenants testified that the RCMP have been called to the property five times, and the last two times, the police asked the Landlord to leave the property, because the Tenants stated, *"this was all harassment."* The Tenants stated the Landlord has never provided them with a written notice prior to receiving the One Month Notice.

The Tenants stated that the first time the RCMP were called was January 3, 2022 which corresponds to the date of the burglary. The RCMP were called on January 9, 2022 and two times in February. On March 8, 2022, MG and her boyfriend/fiancée were putting up a tent outside on the property. The police came and said that they have every right to put a tent up because it is MG's grandparents' home. They stayed for three days. The Tenants testified that the police were called for a break and enter on March 8, 2022. They said the RCMP went across the street for the video evidence from the hamlet. The Tenants stated that the video evidence did not show that MG entered the rental unit, instead it was a male.

At the adjourned hearing date, the Tenants said that their daughter, LW, would be speaking on their behalf. LW testified that there have never been six people living with the Tenants. LW submitted that her parents live alone, two of them only. LW submitted that of the four police files, three of them were initiated by the Tenants to escort the Landlord out of the Tenants' rental unit.

On November 17, 2021, MG was flooded out of her previous residence. LW told that her mother asked the Landlord if she could get MG and she could stay until she found alternative housing. LW said the Landlord said, “100%”. MG came to the city where her grandparents lived and stayed in their home from November 17, 2021 to November 23, 2021, and then “*they found a place to live as you have all the receipts.*” The Tenants uploaded room without board receipts for MG and her boyfriend/fiancée for the months of December 2021, April, May, and June 2022 written by LW but in her married name. February and March 2022 receipts say essentially the same words, “*Room without Board – payed*” with a printed name of someone who did not attend the hearing to attest to their validity.

LW stated that all the evidence brought up by the Landlord is “*absolutely ridiculous.*” LW argued that she has had custody of her granddaughter since the day she was born and said we could see that court order in the evidence. A review of all the Tenants’ evidence did not turn up a court order that MG’s daughter was placed in the custody of her grandmother. The Tenants have never received a written notice by the Landlord, and the neighbours have never made a call to the city police. If they were so scared for their lives, would they not have called the police?

MG submitted after the flood in the previous city she lived in, she came to the current city and stayed with her grandparents for five days. Starting in December 2021, MG testified that she stayed at her mother’s home. MG said she did visit her grandparents frequently, but she did not live with her grandparents for months and months. MG said the Landlord told her she was not allowed to visit her grandparents’ rental unit. MG admitted she has a bad past, and she has a criminal record. Starting in July 2022, MG signed a year lease for her own rental unit.

The Landlord submits that they seek to end this tenancy on the grounds of an unreasonable number of occupants in the rental unit. The Landlord’s witnesses corroborated the occupancy of, at least, MG, her boyfriend/fiancée, and her daughter.

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:*

...

(c) *there are an unreasonable number of occupants in a rental unit;*

(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,*

...

(iii) *put the landlord's property at significant risk;*

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

...

(ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

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

...

(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.*

...

I find the Tenants were served with the One Month Notice on April 23, 2022. I find the notice complied with the form and content requirements of Section 52 of the Act. The Tenants applied for dispute resolution on April 26, 2022 which was within the 10 days after receiving the One Month Notice.

The Landlord and his witnesses testified that there have been at least three people, sometimes four, living with the Tenants off and on since the beginning of this year. The Tenants uploaded rent receipts, some written by LW in her married name, and two others by another person who did not attend the hearing as a witness, which they submit show evidence that MG and her boyfriend/fiancée have not resided with the Tenants since December 2021, after a brief five-day visit in November 2021. I find that I can put little evidentiary weight on the presentation of the rent receipts, from LW which I find self-serving, and two others by some other person who did not testify at the hearing. I find that there has been an unreasonable number of occupants in the residential unit and that the Landlord has proven on a balance of probabilities cause to end this tenancy.

The Landlord submits that persons permitted on the residential property by the Tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Again, the Landlord and his witnesses testified that the additional occupants have significantly interfered with or unreasonably disturbed other occupants and the Landlord of the residential property. The Landlord uploaded an audio recording from January 22, 2022 which illustrated the kind of significant interference the Tenants' additional occupants have caused on the property. JL, an occupant in the residential property, said the boyfriend/fiancée is always swearing at her, and saying "*hurry up and die old lady.*" JL does not feel safe living in her home with the additional occupants staying at the Tenants' rental unit. I find that the additional occupants have significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The Landlord suspects that one of the additional occupants was the person responsible for a break and enter into a neighbour's home beside the Tenants' rental unit. Also, somehow this tenant's identity was fraudulently used to open three credit cards. The bank confirmed to the tenant that the forwarding address provided was LW's. This tenant ended her tenancy early with the Landlord as she was fearful living in her rental unit beside the Tenants. The Landlord testified that he lost a good tenant and I find that the additional occupants have seriously jeopardized a lawful right of the Landlord, specifically maintaining full rental occupancy of the property.

The Tenants said the conduct of the hearing was one-sided. This hearing comprised two hearing days to allow time for the Tenants to adequately provide evidence in the matter. I find procedural fairness required the additional time for the Tenants to bring out all the evidence they wanted to rely on. The Tenants did not cross examine the Landlord's witnesses, although given the opportunity. The Tenants stated they were never given a written warning prior to the One Month Notice. I find that a written warning is not required for the causes specified in the One Month Notice in this matter.

Based on the testimony of the Landlord and the Tenants, and witness testimony from neighbours of the residential property which I find corroborates the testimony of JL, I am satisfied that the Landlord has proven cause to end this tenancy on a balance of probabilities. I dismiss the Tenants' application to cancel the Landlord's One Month Notice without leave to re-apply.

As the Tenants were unsuccessful in their application, I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

Order of possession for the landlord

- 55** (1) *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.*

I previously found that the One Month Notice complied with Section 52 of the Act, and I dismissed the Tenants' application. I grant the Landlord an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenants.

As the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenants. The Landlord must serve this Order on the Tenants as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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: October 2, 2022

Residential Tenancy Branch