



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding Nixen & Niko Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC

Introduction

The tenants seek an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

A hearing was convened on November 14, 2022 and in attendance were both tenants, their advocate (and support worker), an agent for the landlord, and the landlord’s property manager. The parties were affirmed, and no service issues were raised.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenants live in a rental unit located in a three-storey multi-unit residential building. There are 15 rental units in the building. The tenants’ rent is \$1,150.00 and there is a \$575.00 security deposit in trust. No copy of any residential tenancy agreement was submitted into evidence by either party, but the terms of the tenancy agreement were not in dispute. In addition, the landlord confirmed that the landlord’s address for service is included on page 1 of the tenancy agreement.

On July 5, 2022, the landlord served the Notice—a copy of which is in evidence—on the tenants. The building manager purportedly served the Notice in person on the tenants.

Multiple reasons for the Notice being issued were checked off on page two of the Notice.

The landlord's agent and property manager testified that the tenants' behavior, which consists of constant yelling, fighting, and noise disturbances have caused other tenants in the building to vacate, and others are scared. In various instances have continued from when the tenancy began on April 1, 2022 up until the present day. The RCMP have come to the rental unit on a frequent and constant basis. The tenants allegedly bring non-tenants into the building who ought not to be there. People being invited into the building are doing drugs and other occupants of the building have found needles.

At this point, three separate occupants (other tenants in the building) have ended their tenancies. Submitted into evidence were letters and correspondence from various people in the building, three examples of the seven in total are as follows:

1. "M." writes of hearing "crackheads yelling at the balcony of [the tenants]" not a week after the tenancy began. She has also "been findin crack pipes" around the property.
2. K.R." writes, in an email dated November 2, 2022 to the landlord (B.B.), that the tenants "have been screen/shouting [sic]" and "Being obnoxious, banging on the doors to get into the building".
3. The building manager, in an email dated October 24, 2022, describes how the tenants have "Been nothing but a disturbance with yelling screaming" and of finding "needles in the parking lot" and how "we have some tenants move out because of these tenants".

The tenants' advocate submitted that one of the tenants has mental health struggles. Schizophrenia to be exact. The tenants do not have access to illicit substances and are given medication under the care of a professional. As for the numerous RCMP visits these are all for mental health checks. If there are any noise disturbances it is because of the one tenant's schizophrenia.

Regarding the Notice, the advocate pointed out that the landlord's address is not included. Instead, the various boxes where an address would be listed are filled in with "N/A". They further referred to the Notice not being signed by the landlord or their agent. The "name of landlord/agent" and the "signature of landlord/agent" boxes at the bottom of the Notice are blank. The advocate also argued that none of the four boxes that are checked off on page two of the Notice are true. There is, they argued, a lot of miscommunications between the parties, but primarily from the landlord.

Analysis

Where an applicant tenant disputes a notice to end tenancy, the onus falls on the respondent landlord to prove the grounds, or reasons, for ending the tenancy. In this dispute, the Notice was issued under section 47 of the Act.

While four boxes—the reasons why the Notice was being given—are checked, the landlord focussed on two boxes corresponding with subsection 47(1)(e)(ii) of the Act:

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

And subsection 47(1)(e)(iii) of the Act:

the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The documentary evidence, supported by, and consistent with the agent's and property manager's sworn testimony, persuades me that the tenants have, through their ongoing behavior and actions, engaged in illegal activity adversely affecting the quiet enjoyment, security, safety, and physical well-being of other occupants. Numerous tenants have written about their ongoing ordeals in living aside two disruptive neighbours. Indeed, three occupants have ended their tenancies because of the tenants' behavior.

Taking into careful consideration all of the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that the Notice was validly and correctly issued on the basis of subsection 47(1)(e)(ii) of the Act.

Section 52 of the Act requires that any notice to end tenancy comply with form and content requirements. Having reviewed the Notice, while the person delivering the Notice (the building manager) did not sign the bottom of page one of the Notice, there can be no reasonable misunderstanding as to who issued the Notice.

Indeed, the tenants, I find, knew who issued the Notice because they filed an application to dispute the Notice within two days of being served, and they correctly named the landlord in their application.

Further, the tenants' *Residential Tenancy Agreement* included the address for service of the landlord. And, as noted on page three of the Notice, "An error in this Notice or an incorrect move-out date on this Notice does not make it invalid."

Finally, section 10(2) of the Act states that "Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used." In other words, it is my finding that, despite the absence of the landlord's agent's signature or the landlord's address of service on the Notice, the Notice is valid.

Pursuant to section 55(1) of the Act, having found that the Notice complies with section 52 of the Act, and having dismissed the tenants' application, the landlord is granted an order of possession of the rental unit.

A copy of the order of possession is issued within this decision to the landlord. It is the landlord's responsibility to serve a copy of this order upon both tenants.

Conclusion

The application is dismissed without leave to reapply.

The landlord is granted an order of possession of the rental unit.

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: November 15, 2022

Residential Tenancy Branch