



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, CNC, LRE, AS, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for ~~unpaid rent~~ cause pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), pursuant to section 47;
- an order allowing the tenant to assign or sublet because the landlord’s permission has been unreasonably withheld pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not 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.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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.

Issue(s) to be Decided

Should the One Month notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order allowing them to assign or sublet the suite?

Are the tenants entitled to an order limiting or restricting the landlords access to the rental unit?

Background and Evidence

The landlords counsel made the following submissions. Counsel submits that the tenants behaviour is a significant disturbance to other tenants, neighbors and the landlord. Counsel submits that the tenants allow prostitutes onto the property and that drug activity is occurring. Counsel submits that the landlord has warned the tenants numerous times but their behaviour has not changed. The landlord issued a One Month Notice to End Tenancy for Cause on June 29, 2022 with an effective date of July 31, 2022 for the following reasons:

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

(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

MN testified that the tenants cause lots of noise and their friends disrupt other tenants. MN testified that he wants an order of possession and for the tenancy to end.

SO gave the following testimony on behalf of the tenants. SO testified that they are not the cause of any of the issues. SO testified that the unit is on a very busy street in Vancouver with many people coming and going at all hours of the day and night. SO testified that when the landlord told her he was going to install security cameras, she was all for it so that it would clear her name, but he didn't follow through with it. SO testified that the landlord did not advise her of any issues until she received the notice to end tenancy. SO testified that she questions the complaint letters as they are vague and without specifics. SO testified that she would like to remain and continue her tenancy.

Analysis

Where a tenant applies to dispute a 1 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based. The landlord did not meet his onus of proof.

The landlord provided complaint letters from one neighbor, two current tenants and one former tenant, however, none of those parties attended the hearing. I find the letters to be very general and lacking in specific dates and details. In addition, the letters were all dated two months after the notice to end tenancy was issued. Furthermore, the landlord testified that he had advised the tenants of the ongoing complaints numerous times before issuing the notice to end tenancy by text message but did not submit any of those messages for this hearing. I find that there is simply not enough evidence at this time to end this tenancy. Due to the insufficient evidence before me, the tenancy is to continue.

Accordingly, the landlord's 1 Month Notice, dated June 29, 2022, is cancelled and of no force or effect. The landlord is not entitled to an order of possession, pursuant to

section 55 of the *Act*. This tenancy will continue until it is ended in accordance with the *Act*. The landlord's application is dismissed in its entirety.

Although the tenants were given a full and uninterrupted opportunity to present their application, they only spoke to the notice to end tenancy and were briefly touched on the two other items applied for. Based on the insufficient evidence before me regarding the issues of subletting and limiting the landlords access to the unit, I hereby dismiss those two items without leave to reapply.

As neither party was completely successful in their application, both parties must each bear the cost of their filing fee.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is granted.

The landlord's 1 Month Notice, dated June 29, 2022, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: December 06, 2022

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Residential Tenancy Branch