



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants and landlord B.M. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Landlord M.B. confirmed the landlord's email address for service of this Decision. The tenants requested that this Decision be served via regular mail to their home address listed on this application for dispute resolution.

Section 55(1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenants' application or upholds the landlord's notice, the director must grant the landlord an order of possession.

Preliminary Issue- Amendment

Landlord B.M. testified that the tenants spelt her name incorrectly in this application for dispute resolution. In the hearing Landlord B.M. provided the correct spelling of her name. Pursuant to section 64 of the *Act*, I amend the tenants' application to correctly spell landlord B.M.'s name.

In the hearing the tenants confirmed that their names listed in this application for dispute resolution are their correct legal names.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the tenants' claim to cancel to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice. I exercise my discretion to dismiss the tenants' claim for an Order to provide services or facilities required by the tenancy agreement or law, with leave to reapply.

Preliminary Issue- Service

The tenants testified, and landlord B.M. confirmed, that the tenants served landlord B.M. with the notice of dispute resolution form and supporting evidence package. Landlord B.M. testified, and the tenants confirmed, that landlord B.M. served the tenants with the landlords' evidence package. I find that all parties have been served with the required documents in accordance with the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenants' application is dismissed or the landlords' Notice upheld, and the Notice complies with the *Act*, are the landlords entitled to an Order of Possession, pursuant to section 55(1) of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2021 and is currently ongoing. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month.

Landlord B.M. testified that she personally served tenant R.L.B. with the Notice sometime in the week following July 4, 2022. Tenant R.L.B. testified that landlord B.M. personally served him with a copy of the Notice, but he could not recall on what date.

The Notice was entered into evidence, is signed by landlord B.M., is dated July 5, 2022, gives the address of the rental unit, states that the effect date of the notice is August 31, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- 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;
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Details of Cause section of the Notice states:

[The tenants] are illegally selling drugs and alcohol out of their unit. Cars come and go at all hours of the night to purchase the drugs and/or alcohol. These people have knocked on other tenants doors looking to buy the items mentioned above. Loud noises, banking, slamming doors etc is heard from 10 p.m. – 4 am on a regular basis, disturbing other tenants. [The tenants] have multiple pest infestations such as cockroaches, rats due to the garbage and unsanitary conditions of the inside and outside of the unit. [The tenants] were given many warnings and notes, including a written notice to take care of the issues above and have failed to do so.

Landlord M.B. testified that loud noises can be heard coming from the tenants' unit between the hours of 10 p.m. and 4 a.m., and that the tenants have received letters pertaining to same dated May 21, 2022 and May 25, 2022. Landlord M.B. testified that the tenants sell drugs and alcohol out of their unit and that people come by at all hours of the day and night to buy the drugs and alcohol and that their presence disturbs their neighbours. Landlord M.B. testified that intoxicated guests of the tenants have mistakenly knocked on the doors of the tenants' neighbours late at night looking to buy alcohol.

The aforementioned May 21 and May 25, 2022 letters were entered into evidence. The May 21, 2022 letter states:

This letter is an incident report to notify you that we have received multiple noise complaints on May 20th, 2022 about loud noise coming from your unit after quiet hours of 10 p.m. Loud noises are being heard from your unit between 10 pm and 1 am. Please be aware that you share walls with neighbours and that quiet time is after 10 pm as per the Addendum.

The May 25, 2021 letter states:

This letter is an incident report to notify you of the incident that happened on May 23, 2022 where a visitor that was attempting to knock on your door at 11 pm, knocked on the wrong door and startled another tenant in another unit and woke them up. This visitor appeared to be visibly intoxicated and asked to buy alcohol. This type of behaviour of selling alcohol in the complex is not tolerated.

This is the second incident report in a week where we have asked you to keep noise to a minimum after quiet hours of 10 pm. Further incident reports could result in an eviction for failure to comply with your Lease and Addendum.

The tenants testified that they do not sell drugs but do sell alcohol from the subject rental property to make "extra coin". The tenants testified that loud sounds have not emanated from their unit late at night.

Landlord B.M. testified that in June of 2022, contractors hired to replace the windows in the subject rental property informed her that the subject rental property has a cockroach infestation due to the garbage stored inside the subject rental property. Landlord B.M. testified that the tenants were told in a letter dated June 28, 2022 that they had until July 4, 2022 to clean up the subject rental property or they may face eviction. The June 28, 2022 letter was entered into evidence. Landlord B.M. entered into evidence photographs of inside and outside the subject rental property showing large piles of garbage both inside and outside the subject rental property.

Landlord B.M. testified that the tenants did not clean up all the garbage by July 4th, 2022. Landlord B.M. entered into evidence a text message from tenant R.L.B. dated July 4, 2022 which states that he needs more time to clean.

Landlord B.M. testified that the piles of garbage have been an ongoing problem for months and that she has reached out to the tenants' social worker but the tenants continue to allow large amounts of garbage to accumulate. The landlord entered into evidence emails to the tenants' social worker regarding the garbage issue dating back to March 2022.

Tenant R.L.B. testified that six people live at the subject rental property and that garbage piles up quicker than it can be disposed of with the regular garbage pick up. Tenant R.L.B. testified that the big issue is to have enough money to clean up the

garbage. Tenant R.L.B. testified that he has reached out to his social worker but that she is pretty busy.

Analysis

Based on the testimony of both parties, I find that the Notice was personally served on the tenants in accordance with section 88 of the *Act*.

Section 47(1)(d)(i) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Based on the testimony of both parties, I find that the tenants sell alcohol from the subject rental property. Based on the May 25, 2022 letter entered into evidence and the testimony of landlord B.M., I find that the alcohol sales continue after the quiet hours of the subject rental property and that the tenants' patrons are not always sober. I find that the tenants' patrons, who are allowed on the subject rental property by the tenants, are the tenants' guests for the purpose of this *Act*, because their attendance is permitted and encouraged by the tenants. I find that the tenants' guests and the tenants have significantly interfered with their neighbours by banging on the tenants' neighbours doors past 10 p.m. looking for alcohol. Pursuant to section 47(1)(d)(i) of the *Act*, I uphold the Notice.

Based on the testimony of both parties and the photographs entered into evidence by the landlord, I find that the tenants have allowed large amounts of garbage to collect inside and outside the subject rental property. Based on the testimony of the landlord and the June 28, 2022 letter entered into evidence, I find that the accumulation has attracted cockroaches and the failure of the tenants to clean up the mess over a span of months, dating back to at least March of 2022, has put the landlord's property at serious risk of pest infestation and associated damages. Pursuant to section 47(1)(d)(iii) of the *Act*, I uphold the Notice.

As I have upheld the Notice under two separate subsections of section 47 of the *Act*, I decline to consider if the Notice should be upheld under any other subsections. As I have upheld the Notice, I dismiss the tenants' application to cancel the Notice, without leave to reapply.

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

Section 55(1) of the *Act* states that 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 find that since the Notice complies with section 52 of the *Act*, the tenants' application to cancel the Notice was dismissed and the Notice was upheld, the landlords are entitled to a two-day Order of Possession.

As the tenants were not successful in this application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' application for dispute resolution is dismissed without leave to reapply.

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlords effective **two days after service 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: December 06, 2022

Residential Tenancy Branch