



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1132993 BC
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application by the Tenants for an order cancelling a notice to end tenancy for cause pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Tenants did not attend the hearing that started at 11:00 a.m. and ended at 11:22 a.m. As the Tenants did not attend the hearing their application is dismissed. The Landlords were given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end valid?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on February 1, 2022. Rent of \$2,090.00 is payable on the first day of each month. On August 26, 2022 the Landlord gave the Tenants a one month notice to end tenancy for cause dated August 26, 2022 (the “Notice”). The Notice sets out the following reasons to end the tenancy:

- The tenant or person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Notice does not include details that identify the material term and how it was breached. The Landlord did not send the Tenant a letter setting out a breach of any material term and the time allowed for its remedy. The Landlord states that the breach is the breach of the term requiring the Tenants to abide by the strata rules.

The Landlord states that the Tenant caused significant interference or unreasonable disturbance by making loud noise on March 11, 2022. The Landlord does not have any evidence from any person who made a complaint of this noise to the strata. The Landlord has no evidence of whether the person complaining was affected in any way by the noise. The Landlord only has a copy of a letter from the strata in relation to the incident and setting out possible fines for the incident. The Landlord states that the Tenants again caused loud noise on two week-ends and that a person complained about the noise on August 12, 2022. The Landlord provides a copy of a strata letter in relation to the incidents. It is noted that the letter does not indicate when the noise occurred. The Landlord has no evidence from the person who made the complaint.

The Landlord states that subsequent to the issuance of the Notice the Tenants parked a damaged vehicle in the garage and a complaint about the vehicle was made to the strata on September 6, 2022. The Landlord states that the Tenant was given notice to move the vehicle and that the vehicle was moved about a month later. The Landlord argues that the actions of the Tenants show a disregard for the rules. The Landlord confirms that no breach letter was sent to the Tenants in relation to this incident.

The Landlord states that in November 2022 the Tenants left a rock to keep an exit door open to allow friends to enter. The Landlord has no evidence from anyone to support the identity of any one of the Tenants being involved with this incident.

Analysis

Section 47(1) of the Act provides 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, or
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Although the Tenants' application to cancel the Notice has been dismissed, I cannot find that the Notice is valid for its reasons at issuance or thereafter. The noise incidents were several months apart and there is no supporting evidence of the impact of this noise on any person. I also note that the strata's remedy for this breach is the possible imposition of a fine. No fine has been imposed. The term requiring the Tenant to abide by the strata rules cannot be a material term as that would mean any of the rules being breached would be a breach of a material term. Further the Landlord did not give the Tenant a breach letter, as described in policy guideline #8, for any of the incidents. Lastly the incidents described by the Landlord are not incidents that continue with the noise behavior or raise this behavior to a greater level. The Tenants complied with the request for the removal of the vehicle and there is no evidence to support that the Tenants were responsible for leaving a door open. For these reasons I find that the Notice is not valid, and I cancel the Notice. The tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

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: January 18, 2023

Residential Tenancy Branch