



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, FFT

Introduction

On September 9, 2022, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated September 2, 2022, for an order to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and their Advocate (the “Landlord”) as well as one of the Tenants and their Advocate (the “Tenants”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters - Related Issues

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well another issue. I find that this other issue is not related to the Tenant's request to cancel the Notice. As the other matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order to reduce rent for repairs, services or facilities agreed upon but not provided.

I will proceed with this hearing on the Tenant's claim to cancel a One-Month Notice and recover the filing fee for this application.

Issues to be Decided

- Should the Notice dated September 2, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the tenancy began on May 5, 2021, with the Tenants currently paying rent in the amount of \$1,200.00. The parties also agreed that at the outset of the tenancy, the Tenants paid a \$450.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Notice shows and the parties agreed that the Landlord served the Notice to end tenancy to the Tenants on September 2, 2022, by personal service. The Tenants provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- 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*

The Notice states that the Tenants must move out of the rental unit by October 10, 2022. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Notice was issued due to several complaints from other occupants on the rental property, the neighbours of the rental property. The landlord testified that the complaints are associated with a guest of the Tenant. The Landlord testified that they have spoken to the Tenant several times regarding their guest's behaviour while on the rental property but that the bad behaviour of this guest has continued, and the Tenant has not taken appropriate action to control their guest or stop them from coming on the property as asked by the Landlord. The Landlord has submitted five police file numbers, two witness statements and two videos into documentary evidence to support their claims against the Tenants guest.

The Landlord testified that the Tenants guest while driving the Tenant's car, and while under the influence of alcohol, backed into the neighbour's parked car. The Landlord submitted that the two videos already in evidence captured this event.

The Landlord testified that on August 22, 2022, the Tenants guest, while under the influence of alcohol broke into the neighbouring suite of this rental property and that the police were called to the rental property to remove the Tenant's guest. The Landlord submitted that the first witness statement already in evidence was from the renter occupying that suite.

The Landlord testified that on August 23, 2022, the Tenants guest, while under the influence of alcohol broke a window in the Tenants rental unit, in order to gain entry when the Tenant failed to answer the door. The Landlord referred to both witness statements, already in evidence, as evidence of this event.

The Tenant testified that they had not done any of these things but agreed with the Landlord's testimony regarding their guest's actions.

The Tenant submitted that their friend (guest) in question was also a friend of the Landlord and the other renter on the rental property and that as they were all friends the guest was not just there to visit them, and they should not be held solely responsible for that guest's actions while on the rental property.

The Landlord testified that the Tenant's guest is not a friend of theirs and that the only interactions they have had with the Tenants' guest were due to the Tenants inviting them on the rental property and them having to deal with the complaints against the guest.

The Tenant offered a settlement during these proceedings, stating that if they promised to not allow this guest back on the rental property would the Landlord withdraw their notice.

The Landlord declined this request stating that the Tenant had promised them multiple times that this guest would not be invited back to the rental property and that each time the Tenant always let this guest return.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties and find that the Tenants received the Notice to End Tenancy on September 2, 2022. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (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.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenants had until September 12, 2022, to file their application to dispute this Notice. I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed their application on September 9, 2022, within the legislated timeline.

I accept the agreed-upon testimony of these parties, supported by the Landlord's documentary evidence, that the Tenants have permitted a guest on the rental property that has disturbed the Landlord and the other occupants of the rental property.

As for the Tenants' claim that the Landlord and the other occupant are also friends with the Tenants' guest, the parties, in this case, offered conflicting verbal testimony regarding a possible friendship between the Landlord, the other occupant and the Tenant's guest. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As it is the Tenants who are claiming a friendship exists between the Landlord, the other occupant, and the Tenants' guest, it is the Tenants who must provide sufficient evidence over and above their testimony to establish this claim. I have reviewed the evidence submitted by the Tenants, and I find that there is no evidence before me to support the Tenants' claim that a friendship existed between the Landlord, the other occupant, and the Tenants' guest.

I have also reviewed the witness statements and video evidence from the neighbours and the other occupants of the rental property, and I find them to be a credible account of the incidents that have happened on the rental property. I also find that the actions and behaviour of the Tenants' guest, detailed by the Landlord and the two witness

statements, would have unreasonably disturbed the Landlord and the other occupants of the rental property.

For the reasons stated above, I find that a person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenants' application to cancel the Notice dated September 2, 2022.

Section 55(1) of the Act states:

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 have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service of this Order on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their claim, I find that the Tenants are not entitled to the recovery of their filing fee for this application.

Conclusion

The Tenants' application to cancel the Notice, dated September 2, 2022, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **Two days** after service of this Order 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: February 1, 2023

Residential Tenancy Branch