



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding brown bros.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and 2 agents for the landlord.

While the tenants had applied for more time to submit their Application for Dispute Resolution, they confirmed at the outset of the hearing that they received the 1 Month Notice to End Tenancy for Cause on November 26, 2015. I note the tenant's Application for Dispute Resolution was received by the Residential Tenancy Branch on December 3, 2015 or 7 days after receipt of the Notice.

Section 47(4) allows a tenant who receives a 1 Month Notice issued under Section 47 10 days to file their Application for Dispute Resolution if they wish to dispute the Notice. As the tenants submitted their Application within the required 10 day period, I find the need for additional time to submit their Application is moot. I amend the tenants' Application for Dispute Resolution to exclude the issue of additional time.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in their Application to cancel the 1 Month Notice to End Tenancy it must also be decided if the landlord is entitled to an order of possession, pursuant to Section 55(1) of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on March 19, 2014 for a 6 month fixed term tenancy beginning on April 1, 2014 that converted to a month to month tenancy on October 1, 2014 for the monthly rent of \$745.00 due on the 1st of each month with a security deposit of \$372.50 paid.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on November 26, 2015 with an effective vacancy date of December 31, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord submits that they have received multiple complaints regarding noise disturbances caused by these tenants. In support of this position the landlord has submitted the following documents:

- A letter dated October 28, 2015 from the landlord to the tenants indicating they have received complaints that the tenants have been disruptive and disrespectful of other occupants in the residential property. The letter goes on to say that if the tenants continue this behaviour they will be issued a 1 Month Notice to End Tenancy for Cause;
- A copy of an Incident Report dated October 27, 2015 from the occupant of the rental unit below the tenants stating that there is “constant stomping, jumping, yelling, dropping of metal objects, foot tapping/stomping, loud machine gun firing video games, repetitive tapping/stomping on the floor, loud music, all hours of the night and day every day, they do not stop” [reproduced as written];
- A copy of an Incident Report dated October 11, 2015 from the occupant of the rental unit below the tenants complaining of “extreme noise” at 2:30 in the morning and providing a description of the noises as being similar to those reported on October 27, 2015; and
- A copy of a handwritten noise complaint listing several days of disruptive noise noting occurrences from October 30, 2015 to November 23, 2015 that included stomping; repetitive thumping; heavy dropping sounds in the early morning hours; doors repeatedly slammed; “boots on dance competition”; and furniture moving.

The tenants submitted in their Application for Dispute Resolution:

“On November 25th 2015 I asked the landlord located in #102 for assistance with another tenant in #406 who was making loud noise that was repeated for over 2 hours. She agreed that she could hear noise from #406. She said that she would look into it. Next day I received eviction notice. It was first time that I had reported this noise to landlord. I asked my neighbor in #307 if he could hear any noise from my apartment and he reported that he was not disturbed by us but he was from person in #406.” [reproduced as written]

The landlord submitted that at the time of this complaint the two neighbouring units to the subject unit were vacant and as such, the tenant could not have spoken to his “neighbour in #307”. The landlord went on to say that the noise reported in this instance was an 83 year old woman who had fallen and was unable to get up – she was trying to get up and secure assistance.

The tenants testified that they knew it was not an 83 year old woman but a man who was causing the disturbances. The tenants confirmed that they did not investigate the complaint with the landlord. The tenants could not provide any reason why they knew the person was not the 83 year old woman the landlord testified was causing the noises.

The tenants also stated that despite the handwritten complaint they were not in the rental unit on the nights of October 30, 2015 and October 31, 2015 so the noises could not have been caused by them. The tenants testified that they were staying with the female tenant’s mother providing her assistance. The tenants provided no evidence to corroborate this claim.

The tenants submitted that all of the disturbances complained about in the Incident Reports and the handwritten complaint were caused by their neighbours on the same floor as them. However, as noted above, the landlord had testified that the two neighbouring units were vacant at the time of these complaints.

Analysis

Section 47 of the *Act* allows a landlord to 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.

In the case before me, I prefer the landlord’s evidence over the tenants for the following reasons:

1. The landlord has provided evidence of complaints and a warning letter provided to the tenants of disturbances one month prior to the issuance of the 1 Month Notice;
2. I find the tenants' testimony regarding the complaint they made on November 25, 2015 and the landlord's finding is unreliable because these purport to **know** that the noise was caused by someone other than an elderly woman in distress without any evidence to support this claim when the landlord actually did investigate the noise complaint. I find it unlikely that the tenants would have any idea what the cause of the noise was, since they had absolutely no way to know;
3. I find the landlord is a more reliable source to know if a rental unit is vacant or not. As such, I find the tenants' testimony that the noise disturbances attributed to them were caused by their neighbours in units that were vacant to be a fabrication; and
4. The tenants have provided no evidence that the landlord issued the 1 Month Notice in response to their noise complaint of November 25, 2015 despite the landlord's submission of the complaints for the entire month of November 2015, after the tenants had been provided with a written warning regarding previous noise complaints.

For these reasons, I find the landlord has established the tenants have unreasonably disturbed other occupants of the residential property. As a result, I find the landlord has established sufficient cause to end the tenancy.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on November 26, 2015 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

As a result, I find the landlord is entitled to an order of possession.

While the tenants requested an extension of time to vacate should they not be successful in this Application and the landlord agreed to allow them until the middle of

February, 2016 I note that the landlord is not required to enforce an order of possession until such time as they chose to do so. As such, I leave it to the landlord to determine when they want to serve and enforce the order of possession.

Conclusion

I grant the landlord an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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 3, 2016

Residential Tenancy Branch

