



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:11 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord and the landlord's brother (who testified that he is also a landlord of the rental unit) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his brother, and I were the only ones who had called into this teleconference.

The landlord testified the tenants served him with the notice of dispute resolution. He testified the he served the tenants with his evidence package by placing it in the mail box of the rental unit on January 13, 2020. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Amendment of Address of Rental Unit

The landlord testified that the rental unit is a basement suite. The address of the rental unit listed on the tenants' application does not include the designation "basement". Based on the evidence presented to be (recounted below), I find that the rental unit is a basement suite, and that an amendment to correct the address of the rental unit could have reasonably been anticipated by the tenants. As such, pursuant to Rule of Procedure 4.2, it is appropriate to

amend the tenants' application to include the designation of "basement" to the address of the rental unit for the purposes of this application.

Issues to be Decided

Are the tenants entitled to:

- 1) the cancelation of the Notice; and
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord and his brother, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord' claims and my findings are set out below.

The landlord testified that the parties entered into a tenancy agreement starting Aug 1, 2016. The rental unit is a basement suite located in a single-detached house. The upper floor is another rental suite which the landlord rents out to other tenants. Monthly rent is \$1,125. The tenants paid the landlord a security deposit of \$550. The landlord still retains this deposit. The landlord testified that the tenancy agreement was in writing, but that he could not locate a signed copy of it. He submitted an unsigned copy into evidence.

The landlord testified that, on November 8, 2019, he received an email from an occupant of the upper unit ("SS") which, in part, stated:

I would like to report one more harassment issue from the downstairs neighbors, which for me was threatening. It took me over 3 days to recover from the panic of having the downstairs neighbor attempting to break into my house last Thursday, Nov 7th. It occurred around 10 pm. While I was preparing my meal for the next day in the kitchen, I suddenly heard the door to the laundry room being smashed from the other side. It was [tenant SO] using a weapon in an attempt to break through the door and saying with extreme anger, "Better be ready to move out of this place, fucking bitch! Nobody will help you now! Not [landlord] or [landlord's brother]!" While [tenant AF] was telling him, "That is enough [tenant SO]!", all while hitting the door with something. I could tell by the noise it was the same object used to hit their ceiling on April 13th. I became panicked because it was clearly not just an attempt to scare me, and it was clear their intentions were to break the door down, and physically remove me from my home with force.

[...]

I called the police loud enough for them to hear, and at that time he had ceased hitting the door. And then I heard [tenant AF] come up to the top of the stairs and

say, "Are you happy now?! I know you are there. I know you can hear me. You can call the police. You are a terrible person."

The landlord received a letter from SS's roommate ("**TO**") on November 13, 2019 which stated:

On Thursday 7th November, at around 9:50pm the event took place. I was sitting in my room when the loud banging started. It was extremely loud, as if someone was trying with all their might to kick the door open, which made me scared about whether the door would break open. This lasted from about 20 - 30 seconds.

During the loud banging of the door being smashed, I could hear a man's voice scream from the other side of the door, "[SS], you better be ready to move out of thia [sic] place!", while also mentioning the name's of people I didn't know, and how these people could no longer help her. After that I also heard a woman's voice yell through the door, "[SS], you can call the police, but just know that you are truly a horrible human being!", or something like that. During the commotion, [SS] was also on the phone with the police dispatcher, which I think the neighbours heard and stopped trying to break in.

The police showed up 5 mins later, and discussed the details with [SS] about the situation. They took a look at the door and saw the damage. They also went downstairs to the front door of the neighbours house to speak with them, but when they knocked the neighbours didn't answer.

After this whole situation, the door still works and locks, however, it is in poor condition and judging by the look of it, would definitely not hold if another break in attempt was to occur. It has cracks all over it, wood is loose, and when locked it still moves loosely in the door frame, instead of staying tightly locked like before.

The landlord submitted copies of both emails into evidence. He also submitted photographs of the damaged door into evidence, in which cracks in the door are visible.

The landlord did not submit any copies of police reports into evidence.

The landlord testified that, on November 15, 2019, he served the tenants with the Notice by posting it on the door of the rental unit. The landlord testified that the Notice was inadvertently mis-dated October 15, 2019. The Notice listed an effective date of December 15, 2019. Additionally, as with the tenants' application, the Notice does not include the designation of "basement" for the address of the rental unit (rather, it lists the street address only of the residential property).

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has
 - o 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;
- 2) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to
 - 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;

The Notice also described the events recounted in the emails above as the basis for ending the tenancy.

The landlord testified that SS has now vacated the upper unit as a result of the incident on November 7, 2019. The landlord entered a letter from SS dated November 29, 2019 into evidence, in which she wrote:

This is a letter to end my tenancy to [the upper unit]. Unfortunately, after all the harassment that I have been facing, which ended having my door broken by the downstairs tenant [SO] I don't feel safe staying here anymore. It has been difficult to sleep at night knowing that at any moment he can be back and do something worse than breaking the door.

Analysis

I find that the landlord served the tenants with the Notice in accordance with the Act.

1. Form of Notice

I find that there are two minor defects with the Notice. The first being the incorrect date of service and the second being the failure to list the designation "basement" with the street address.

Section 68 of the Act allows defects such as this to be fixed. It states:

Director's orders: notice to end tenancy

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

In the circumstances, it is reasonable to amend the Notice to include the correct date of service and street address. The basis for issuing the Notice described the events of November 7, 2019, as recounted in the emails of SS and TO. The mis-dating was an inadvertent error that should

be corrected. It is also reasonable to amend the Notice to include the “basement” designation to the street address. The events described on the Notice make it clear that the Notice was being issued in connection with a dispute between two separate units, and that the tenants are the occupants of the lower unit.

Additionally, I find that the tenants knew, or should have known, the information omitted from the Notice, as it was apparent from the details of the cause to end tenancy of the provided by the landlord on the Notice.

2. Validity of Notice

I accept the uncontroverted evidence of SS and TO as recounted in the emails they wrote to the landlords. I find that the conduct of the tenants described therein constitutes an unreasonably disturbance of SS, who is another occupant of the residential property. I accept SS’s evidence in her November 29, 2019, that the November 7, 2019 incident was so troubling to her that she had to move out of the upper unit.

It is not necessary that all the reasons listed on a Notice be shown to be true for the Notice to be valid. The landlord need only show that one of the reasons is true. He has done so in this situation. As such, it is not necessary for me to examine the other reasons for ending the tenancy listed on the Notice.

I find that the Notice was validly issued, and I dismiss, without leave to reapply, the tenants’ application to cancel it.

Section 55 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 find that the form of the Notice, as amended above, complies with section 52 of the Act.

As I have dismissed the tenants’ application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective two days from the date the landlord serves this order on the tenants.

As the tenants were not successful in their application, I decline to order that the landlord reimburse them their filing fee.

Conclusion

I dismiss the tenants' application without leave to reapply.

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, it may be filed in, 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: January 21, 2020

Residential Tenancy Branch