



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 47 cancelling a One-Month Notice to End Tenancy signed on July 25, 2023 (the “One-Month Notice”); and
- return of the filing fee pursuant to s. 72.

This matter had been scheduled for hearing on December 20, 2022 but was adjourned due to the sudden passing of the Landlord prior to the hearing.

N.H. appeared as the Landlord’s agent. The Tenants did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 11:49 AM without participation from the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advises that the Landlord’s evidence was posted to the Tenant’s door on December 6, 2022 and April 12, 2023. I accept that the Landlord’s evidence was posted to the Tenant’s door and find that this was done in accordance with the *Act*.

Preliminary Issue – Amending the Style of Cause

The hearing on December 20, 2022 was adjourned due to the sudden passing of the Landlord. N.H. attended at that time and advised she did not have authority to act on behalf of the estate. At the reconvened hearing, N.H. indicates she discussed this application with the estate's executor and was authorized by him to proceed on behalf of the estate.

This brings up the issue of the naming of the Landlord. The Tenants have named I.K. as the Landlord. I accept they did so when the Landlord was still living such that it was correct for them to do so. However, Policy Guideline #43 provides guidance on the naming of parties and specifies that when a party is deceased, the estate's personal representative should be named.

N.H. advises that J.B. has been appointed as the estate's executor. Following the guidance in Policy Guideline #43, I amend the style of cause to name J.B., acting as personal representative for the estate of I.K..

Issues to be Decided

- 1) Is the One-Month Notice enforceable?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The Landlord's agent confirms the following details with respect to the tenancy:

- The tenancy began on February 29, 2020.
- Rent of \$918.00 is due on the first of each month.

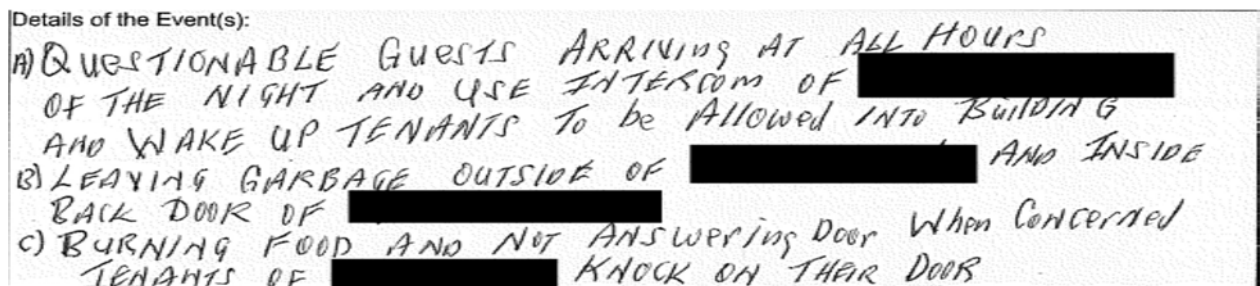
I am provided with a copy of the tenancy agreement by the Landlord.

The Landlord's agent advises that the One-Month Notice was posted to the Tenant's door on July 25, 2022. I find that this was done in accordance with s. 88 of the Act. Pursuant to s. 90 of the Act, I deem that the Tenant received the One-Month Notice on July 28, 2022.

Under s. 47 of the Act, a landlord may end a tenancy for cause by given a tenant at least one-month's notice to the tenant. I am provided with a copy of the One-Month Notice, which cites the following causes for ending the tenancy:

- The tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; and
 - put the landlord's property at significant risk.

The Landlord describes the causes for ending the tenancy as follows:



I have redacted personal identifying information from the image above in the interest of the parties' privacy.

As per s. 47(3) of the Act, all notices issued under s. 47 must comply with the form and content requirements set by s. 52 of the Act. I have reviewed the One-Month Notice provided to me and find that it complies with the formal requirements of s. 52 of the Act. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

The Landlord called two witnesses speaking to a fire that occurred in the Tenants' rental unit on July 25, 2022.

At the hearing, N.B. advises that he lives in a building across the street from the residential property and makes use of a storage space in the residential property's basement. N.B. tells me he was at the property on July 25, 2022 in his storage space when he smelt smoke seeping through the floorboards. He knocked on series of doors do ascertain its source. N.B. says he knocked on the Tenants door twice and that on the second attempt, one of the Tenants opened the door. Upon the Tenant opening the door, N.B. says that smoke bellowed out. N.B. reports that the Tenant told him that she had burnt her toast.

A.B. testified at the hearing that she lives at the subject residential property in a rental unit on the same floor as the Tenants' rental unit. She says that she and her partner returned to the residential property after going on a walk to discover smoke in the residential property. In particular, when walking to their rental unit, A.B. says that the Tenants left the door to their rental unit open and that when they walked past, she observed the Tenant's rental unit to be thick with smoke to the point that they could not see into it.

I accept the testimony provided to me by the Landlord's witnesses and that on July 25, 2022 there was a fire of some sort in the Tenants' rental unit of such severity that the rental unit was thick with smoke. Given the extent of the smoke, I find that it is unlikely that the Tenants burnt their toast. I find that it is likely that the Tenants, either intentionally or through neglect, had a fire in their rental unit that constituted a significant risk to the property and significant disruption to the quiet enjoyment of the other residents of the property.

R.B. was also called as a witness and advised that she lives at the residential property and is in the rental unit below the Tenants' rental unit. R.B. testifies that there were two occasions in which water flooded into her rental unit from the Tenants' suite above. The Landlord's agent says that the Tenants sink overflowed on those occasions.

All three witnesses spoke to a significant level of disturbances caused by the Tenants and their guests. R.B. and A.B. both testified to noise disturbances from the Tenants, including what sounds like fighting, with this said to be occurring at all hours of the day and frequently in the very early morning. R.B. testified that she has lost sleep to the extent that she has had to call into work to notify them that she could not come in.

All three witnesses testified to people coming and going from Tenants' rental unit for short duration. R.B. and A.B. indicate they believe the Tenants are selling illicit

substances from the rental unit based on the level of and frequency of the visits. A.B. says that the police conducted a search of the Tenants rental unit in the fall of 2020. The Landlord's agent says that on one occasion when she was at the residential property, a person came to the property seeking access to the Tenants rental unit and, upon the Tenants being unavailable, offered her cash to purchase an illicit substance.

I accept the undisputed testimony provided to me by the Landlord's witnesses that the Tenants have caused significant noise disturbances in the residential property and have flooded their sink to the extent that it leaked into the rental unit below.

I find that the Landlord has established Tenants have put the property at significant risk by virtue of the apparent fire in the rental unit on July 25, 2022. I further find that the Landlord has established that the Tenants, and their guests, have caused unreasonable disturbances to the other residents of the residential property.

I find that the Landlord has established that the One-Month Notice was properly issued. The Tenants application to cancel the One-Month Notice is dismissed without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession effective two days after it is received by the Tenants.

Conclusion

I dismiss the Tenants application to cancel the One-Month Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

As the Tenants were unsuccessful in their application, I find they are not entitled to their filing fee. I dismiss their claim under s. 72 of the *Act* without leave to reapply.

It is the Landlord's obligation to serve the order of possession. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and 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: April 26, 2023

Residential Tenancy Branch