

## **DECISION**

### **Introduction**

This hearing dealt with cross-applications from the tenants and the landlords.

This included the tenants' July 5, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

This also included the landlord's July 12, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act
- a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

### **Issues to be Decided**

- Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for damage caused by the tenant, their pets or guests to the unit, site or property?
- Is either party entitled to recover the filing fee from the other?

### **Background and Evidence**

The parties agreed that the tenancy agreement was month-to-month verbal tenancy that started after the parties made contact through an AirBnB advertisement. The parties agreed that the monthly cost as an AirBnB accommodation was higher than the \$1,900.00 a month that was established as the monthly rate of rent. The parties also agreed that a security deposit was not paid and that the rental unit is furnished, with utilities included and that the tenants have been residing in the unit since June 1, 2022.

The parties disagreed about most everything else.

The landlord stated that they felt bad for the tenants and offered them a discount because they claimed to need a place to live for three months so that their daughter could finish school. The landlord stated that this agreement was separate from the AirBnB agreement. The landlord did not expect the tenancy to continue longer than those first three months. The landlord referred to the evidence of RTB files related to the tenants to allege that the tenants claimed they were desperate for a place because they were being evicted from their previous rental unit.

The tenants stated that:

- They were offered the place for as long as needed
- The landlord initiated the “cash based” deal
- The cash deal involved all the amenities identified in the AirBnB advertisement
- Everything was good until June 24, 2023, when:
  - The landlord’s child was allegedly screaming
  - The tenants called 911 because the landlord was allegedly threatening the tenants that they had to vacate that day
  - The tenant stated that when they tried to move one of their vehicles from the driveway of the residential property, the landlord allegedly jumped behind them
- Events on June 24, 2023, were related to disagreement about the terms of the tenancy agreement

The parties agreed that a One-Month Notice to End Tenancy (the Notice) was issued on June 25, 2023, by being posted to the door. The tenants acknowledged receiving the Notice the same day. The stated move-out date on this notice is July 31, 2023. This Notice was issued for multiple reasons including:

- Tenant or 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
- Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- Residential Tenancy Act only; security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The tenants disputed the validity of this Notice. They alleged that it was “tampered with” and that it was not signed by the landlord. However, the tenants also stated that they knew the Notice was from the landlord when they saw it on their door. The tenants stated that their rental unit is illegal and that the landlord was evicting them based on hearsay.

The parties agreed that there are two units that are accessible from the basement of the residential property, and that the second unit can be accessed from the main floor unit. The landlord stated that this second unit is part of the main floor unit. The tenants disputed this claim and stated that this separate basement unit was regularly rented in AirBnB during their tenancy.

The landlord stated that the Notice was issued on June 25, 2023, after the incident on June 24, 2023, which occurred as followed:

- The landlord was attending to the other units on the residential property that day with their 6-year-old child
- The landlord contacted the tenants, who were off the property at the time, after documenting an uninsured vehicle on the residential property
- The landlord contacted the tenants because they received complaints from neighbours and other tenants regarding the tenants’ many vehicles at the property
- The tenants returned to the property and became aggressive with the landlord
- The landlord feared for their physical safety and attempted to leave the property
- The landlord stated that their child should have never witnessed such a hostile event
- The landlord alleged that the tenant attempted to hit them with their vehicle while the landlord was attempting to leave the residential property
- Both parties referred to a letter submitted from the landlord’s child about this event – the child writes that the tenant was “trying to kill” the landlord

The tenants referred to the police incident report they submitted for June 24, 2023, to support their testimony that the landlord was in the wrong. The tenants emphasized that an anonymous witness supports their claims as noted in the police report. The tenants stated that they feared the landlord and called 911 because:

- the landlord had tried asking for \$100.00 more a month and the tenants refused
- the landlord was contacting the tenants asking when they would move
- the landlord was allegedly trying to force the tenants out on June 24, 2023

The tenants agreed they had 3 vehicles at this time. The tenants stated that they had permission to park two vehicles. The landlord disagreed and stated that they only had permission to park 1 vehicle, and they received many complaints about the tenants blocking access to the garage of the residential property. The parties agreed that the tenants did not have rights to the garage. The parties also agreed that the tenants

parked their vehicles on the street at times and that this street parking resulted in neighbours complaining about the tenants' vehicles cars blocking their driveways.

The tenants gave inconsistent testimony. However, they did acknowledge that one of their vehicles in the driveway was "leaking for many months" due to a transmission issue. The tenants stated that they have since cleaned up the damage in the driveway due to this leak.

The tenants agreed that they have used aggressively hostile Etransfer passwords since the June 24, 2023, incident when paying rent to the landlord. The tenants claim they are being harassed since the issuance of the Notice because the landlord and their agent have been regularly documenting compliance violations. The landlord stated that they hired an agent because the tenants became too difficult to handle.

## **Analysis**

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One-Month Notice.

I find that the tenants applied to dispute the One-Month Notice within the timeframe allowed by section 47 of the Act because they applied to dispute the Notice on July 5, 2023, after receiving it on June 25, 2023. I considered all testimony and evidence specifically referred to by the parties during this hearing. The event that transpired on June 24, 2023, was a significant event.

Regarding the Police Incident Report submitted by the tenants after the tenants called 911, I do not find it persuasive. I reviewed it in detail and find that it does not indicate that the police communicated with the landlord. I read the Police report as a one-sided summary of the event as recalled by the tenants and documented by Police. The report directs the tenants to seek dispute resolution with RTB.

During the hearing the tenants were unable to articulate why, if they had a good relationship with their landlord, they called 911 on June 24, 2023, when the landlord was on the residential property with their six-year-old child. The tenants were unable to give clear responses. When asked one question, they would be evasive and talking about something else.

I find the tenants were not credible in their testimony because when I asked about timelines, they would be evasive and inconsistent with their testimony and would say things like "a few months before" but would acknowledge an event was long term (the vehicle fluid leak) or that it happened the month prior. I also note that the tenants' behaviour towards the landlord has contributed to the deterioration of their relationship.

The tenants acknowledge that since the June 24, 2023, when paying rent to the landlord by Etransfer they use passwords for the landlord to enter such as:

July 2, 2023: yesuptotwoyearsprison

August 1, 2023: childexploitation

Though these events occurred AFTER the June 25, 2023, Notice was issued, I find that they negatively impact the credibility of the tenants' recollections of June 24, 2023.

In contrast, I find that the landlord provided credible evidence and testimony. This credibility was further illustrated in the landlord retaining the services of an agent to minimize contact and assist with documenting the tenants' violations since the June 25, Notice.

Backing up and considering only events that led up to the June 25, 2023, Notice, I find that the landlord was justified in issuing it under 47(d) of the Act because:

- The parties agreed they had a month-to-month tenancy
- On the balance of probabilities, the landlord established they had cause to issue the June 25, 2023, because the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord
- The tenants alleged that they called 911 because the landlord was threatening to end their tenancy – however no credible evidence or testimony was provided to indicate that the landlord was acting or behaving contrary to the Act, Regulations or Tenancy Agreement
- The landlord was attending to the residential property to deal with the other rental units with their six-year-old child - the child was significantly impacted by the June 24, 2023, incident as shown in their written submission

For the above reasons, the tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

### **Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. Because the tenants claimed that the Notice was "not signed" by the landlord, I find that the landlord's typed name in the signature box, along with the tenants' testimony that they knew the Notice came from the landlord, means that the Notice complies with section 52 of the Act. I find that the landlord is entitled to an Order of Possession.

### **Is the landlord entitled a monetary order for compensation for damage**

The parties agreed that one of the tenants' vehicles leaked fluids on the driveway for an extended period of time. The tenants claimed that these fluids have since been cleaned up. I therefore dismiss the landlords' current claim for compensation. I give leave reapply if required.

### **Recovery of Filing Fees**

Because the landlords were successful in securing an order of possession, I find that they are entitled to recover the \$100.00 filing fee from the tenants. I will provide the landlords with a monetary order in this amount.

### **Conclusion**

I grant an Order of Possession to the landlord **effective two-days after it is served on the tenant(s)**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order in the amount of \$100.00 to the landlord so that they can recover the filing fee. This order must be served on the tenant(s) as soon as possible. Should the tenants(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

The tenants' application to recover the filing fees is dismissed without leave to reapply.

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: October 25, 2023

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Residential Tenancy Branch