



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

OP, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of possession and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

This tenancy began on August 1, 2008. Rent is \$1,300.00 due on the first day of the month.

The landlord stated that a 1 Month Notice to End Tenancy for Cause was issued to the tenant on May 8, 2009 with an effective vacancy date of June 30, 2009. The Notice to End Tenancy indicates that the tenant is repeatedly late paying rent and that she has breached a material term of the tenancy agreement and not corrected it within a reasonable period of time after written notice to do so.

The landlord testified that on May 8, 2009 she and her witness drove up to the tenant and handed her the 1 Month Notice to End Tenancy. The tenant testified that she only received a March, 2009 10 Day Notice to End Tenancy. The landlord testified that she and her witness attended at the rental unit on May 12 to discuss another matter with the tenant and that at that time she discussed the Notice to End Tenancy with the tenant and that the tenant indicated that she felt everything was now good. The landlord stated that she told the tenant that the tenancy would end.

The landlord presented two issues that resulted in her issuing the Notice to End Tenancy. The first is repeated late payment of rent; the second is a breach of a material term by the addition of an indoor dog.

The landlord stated that the tenant would not pay the rent on time and that they asked her for options that might assist in payments being made on time. The landlord testified that the tenant paid her rent as follows:

	Rent Received
August 2008	August 2
Sept. 2008	On time
October 2008	October 6
November 2008	November 5
December 2008	December 2
January 2009	January 5
February 2009	On time
March 2009	March 6
April 2009	April 2

The landlord testified that the tenant always dated her rent cheques for the first of the month. The landlord provided copies of the rent cheques and the bank processing date information. The landlord stated that the cheques would have been received one day prior to the processing date indicated, that upon receipt she would immediately deposit the cheque at an automated teller and that the cheque would process the following day.

The landlord stated that they were away in January 2009 and asked a friend to collect the rent for them. The landlord supplied a letter from this individual who was a witness at this hearing. This letter indicates that the agent made repeated attempts to reach the tenant in order to obtain the rent on January 1, 2009. After repeated attempts by the agent to give messages to the tenant via her children she heard from the tenant on January 3 and that the tenant said she could not pay until she received her new cheques on January 9. The agent for the landlord offered to have the tenant pay the rent by cash and at 2 pm the tenant called the agent and said her bank had closed at 1 pm. Arrangements were made to have a bank transfer made to the landlord's agent on January 5, 2009.

The landlord evidence included notes that a 10 Day Notice for Unpaid rent was issued for the month of March. The landlord supplied a copy of a 10 Day Notice to End Tenancy issued on April 2, 2009. The tenant testified that she received only the March Notice to End Tenancy.

The landlord testified that by March 30, 2009 they had installed a mailbox specifically for the purpose of rent cheque deposit. On March 30, 2009 the landlord gave the tenant a letter explaining the need to use this box to deposit rent cheques on or before the first of each month. The landlord provided testimony and evidence that the rent was paid late in April and May.

The tenant denied paying her rent late and stated that she has been on time with payments. The tenant did sign a receipt for her March 2009 rent payment, which indicates it was received on March 6. The tenant testified that she was unaware that

late payments were a problem, that she had not been given written notice and that the landlord would come over to the rental on the 5th or 6th of the month to obtain the rent.

The landlord evidence indicates that the tenant is allowed to have three indoor cats, one outdoor cat and one outdoor dog. The tenancy agreement additional terms submitted by the landlord indicate that any further pets added to the household will result in termination of the rental agreement.

The landlord stated that on February 22, 2009 she saw the tenant outside with a 2nd dog and asked the tenant if it was hers. The parties agree that the tenant told the landlord it was her mother's dog and it would be gone. On February 26 the landlord issued the tenant a warning letter that the extra pet was a breach of a material term of the tenancy and that she had no more than 15 days to remove the extra dog. This letter is signed by the landlord and the tenant.

On March 28, 2009 during a check of the residence the landlord discovered a small dog in a closet and told the tenant she could not have this dog. The landlord issued the tenant a second letter on April 3, 2009 telling the tenant to remove the extra pet within three days and that the presence of this pet was a breach of a material term of the tenancy.

The tenant stated that she did not sign the February 26th letter; however the tenant agrees that she did receive this letter. There is no tenant signature on the April 3 letter and the tenant denies receiving this letter. The landlord witness testified that on April 3, 2009 she approached the tenant with a copy of this letter and handed it to the tenant.

The landlord submitted copies of daily notes she kept as evidence which indicate that the dog was seen at the tenant's home on April 5, April 7, April 9, April 28 and May 3. The landlord submitted a letter dated June 8, 2009 written by her witness indicating that on May 13, 2009 she heard the tenant tell the landlord that the dog would be going back to her mother's home right away and that subsequently she heard the dog barking from within the home.

The tenant testified that she had only one discussion with the landlord in relation to the dog, that she told the landlord it was her mother's dog. The tenant stated that the dog is now gone and that she understands she was wrong to have this pet in the home.

The tenant did not choose to ask the landlord's witness any questions.

Analysis

On the basis of the landlord's testimony and that of her witness I find that, on the balance of probabilities, the tenant received the One Month Notice to End tenancy on May 8, 2009 with an effective vacancy date of June 30, 2009. The landlord and witness provided independent testimony that presents me with adequate assurance that this Notice was properly served to the tenant. I have not accepted the tenant's testimony that she did not receive this Notice and that she only received one of two 10 Day Notices to End Tenancy for Unpaid Rent.

I have accepted the landlord's testimony that rent payments were repeatedly late. Section 26 of the Act requires a tenant to pay the rent to the landlord on the date that it is due. A tenant can not expect a landlord to issue warnings as the tenancy agreement clearly indicates the due date and payments must be made by that time. I have not accepted the tenant's testimony that she always paid her rent on time and find that the landlord's evidence showing cheque processing dates, which the landlord allowed were dated one day after the date she received the cheques, as more reliable. The fact that the landlord felt compelled to install a mailbox specifically for the purpose of rent payments indicates that the landlord was making all efforts to obtain the rent on time from the tenant. I do not accept that the landlord would have taken this step if the rent payments had been made on time.

The tenancy has been placed in particular jeopardy due to the tenant's refusal to remove the indoor dog she obtained in February, 2009. Whether this was her mother's dog or not, the tenant has admitted that she was wrong to have had this dog in the rental unit. I find that the tenant ignored repeated warnings and reasonable removal due dates given by the landlord, which resulted in the tenancy being at risk. The tenant has been allowed to have pets, but the addition of an indoor dog was a clear breach of the tenancy agreement made between the parties. The tenant testified that she has now removed the dog but this did not occur within the reasonable periods of time that the landlord had provided to the tenant.

I find that this tenancy must end, based upon the One Month Notice to End Tenancy issued by the landlord on May 8, 2009 for both repeated late payment of rent and the failure of the tenant to remove the indoor pet within a reasonable period of time after being given written notice to do so.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Any deposits paid by the tenant are held in trust by the landlord and must be disbursed as determined by section 38 of the Act.

Conclusion

The landlord has been granted an Order of possession that is effective at 1:p.m. on June 30, 2009. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00, which is comprised of the \$50.00 filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 23, 2009.

Dispute Resolution Officer