



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

The hearing was conducted via teleconference and was attended by the tenant; her two witnesses and two agents for the landlord. The tenant had another witness available but did not call him to provide testimony and I attempted to call in a 4th witness and got her answering machine and so no testimony was provided by the 4th witness.

During the hearing, the landlords did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

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

If the tenant is unsuccessful in her Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

Background and Evidence

The landlord has provided the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on July 23, 2008 for a 1 year fixed term tenancy beginning on August 1, 2008 for a monthly rent of \$995.00 due on the 1st of each month that converted to a month to month tenancy on August 1, 2009, with a security deposit of \$497.50 paid. The agreement shows that no pet damage deposit was paid but that if the tenant wanted a pet she would be required to sign a pet agreement addendum and that she would have to pay a pet damage deposit. The clause stipulates that a violation of this material term might result in a notice to end tenancy;
- A copy of a 1 Month Notice to End Tenancy issued on August 30, 2012 with an effective vacancy date of September 30, 2012 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; seriously jeopardized

the health or safety or lawful right of another occupant or the landlord; or put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; or jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has breached a material term of the tenancy agreement that has not been corrected within a reasonable time to do so; and

- Copies of a letter sent from the landlord to the tenant dated August 23, 2012 advising her that after an inspection of the rental unit on August 22, 2012 the landlord discovered the tenant had 20 – 30 cats in her unit; that this is in breach of a material term of the tenancy agreement; that she has until August 30, 2012 to comply with the directive and failure to do so will result in eviction.
- Two reports from workers on site who cannot go back into the tenants rental unit due to the smell of cat urine and feces;
- Several written complaints from several tenants on the residential property dating from July 28, 2012 to September 11, 2012.

The tenant's witness/agent testified that on August 30, 2012 the landlord served the witness/agent with the first page of the 1 Month Notice to End Tenancy and the 2nd page to the tenant's daughter. The landlord's agent testified that she placed in the tenant's mail slot in the door of the rental unit on August 30, 2012. In her Application for Dispute Resolution the tenant states that she never did receive the 2nd page of the 1 Month Notice.

The tenant testified that when she moved in the landlord was aware that she had cats and that they waived the pet agreement and pet damage deposit. The tenant provided no evidence to support these statements. The tenant acknowledged she did not allow the landlord access to the unit for an inspection because she was away and that at the time they did inspect the unit she had 20 cats and now she has 10 left.

The tenant's witness/agent testified the tenant originally had 10 cats and now has 4 left. The tenant and her son assert that events of September 7, 2012 included her son but it was his friend who pulled the knife on the other tenant.

The tenant's witness/agent testified the rental unit was cleaned and there were no problems with the unit at this time other than the need for a new hot water heater. The landlord testified that they had attempted to complete a follow up inspection and the tenant would not allow access.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has

- a. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- b. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- c. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - a. Has caused or is likely to cause damage to the landlord's property;
 - b. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; or
 - c. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- c) The tenant
 - a. Has failed to comply with a material term, and
 - b. Has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

Based on the testimony provided, I find the tenant and her witnesses have provided different accounts of their side of the issues. For example, the tenant states he did not receive the 2nd page of the 1 Month Notice and her witness states the 1st page was served to her and the 2nd to the tenant's daughter. As such, on the matter of service I find the landlord's testimony to be more credible.

Similarly in relation to the issue of the cats, I find the tenant and her witness have provided different details as to the number of cats. In addition, I find the tenant has failed to establish that the previous management was aware of her having cats and she provided no explanation as to why she would have initialed the clause in the tenancy agreement requiring her to pay a pet damage deposit and sign a pet agreement.

And finally, the tenant has provided no valid reasons for not reducing her number of cats down to 2 as requested by the landlord whether she has 15 or 4 left.

I accept the landlord has established the pet clause in the tenancy agreement was a material term of the tenancy agreement as it represents the landlord's concerns in regards to the damage caused by pets to their rental units. I find the landlord advised the tenant she was in breach of a material term; gave her adequate time to correct the breach but the tenant decided to leave the province during the time period instead of dealing with the issues.

Further, I find the tenants refusal to allow the landlord access to inspect the rental unit has seriously jeopardized the lawful right of the landlord and that the landlord's property at significant risk due the volume of cats in the rental unit.

For the reasons noted above, I find the landlord has established sufficient cause to end the tenancy and the 1 Month Notice to End Tenancy for Cause issued on August 30, 2012 is valid and enforceable.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails 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: October 05, 2012.

Residential Tenancy Branch