



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT, OLC, FFL, OPC

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

The landlord applied for

- an Order of Possession pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Preliminary Issue – exchanging of evidence

The tenants were represented by an advocate. The landlord was represented by the general manager and the resident manager. All parties gave affirmed evidence. The advocate confirmed that the tenants had received all of the landlords' documentary evidence. The advocate submitted that the tenants served the landlord their evidence by way of registered mail. EM testified that she has not received any documentation from the tenants. EM testified that she contacted the head office as late as 3:00 p.m. the day prior to this hearing to see if the tenants had sent her anything, which she stated that they did not. NC submits that the tenants sent their evidence by registered mail on or about June 20, 2018, however; they were unable to provide sufficient evidence to

support that. Residential Tenancy Rules and Procedures 3.14 address the issue before me as follows:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

NC submitted that the tenants had served the landlord their documentary evidence by registered mail, however; they were unable to provide the tracking number or the exact date as to when they did it. Although the tenants were present, none of them provided any testimony or information for this hearing. As the tenants were unable to provide sufficient evidence to show that the landlord was served with their documentary evidence, the tenants' documentation is not being considered as part of this decision. The hearing proceeded and completed on that basis.

Issue(s) to be Decided

Are the tenants entitled to have the One Month Notice to end Tenancy for Cause set aside? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Is either party entitled to the recovery of the filing fee from the other for the cost of their application?

Background and Evidence

EM and OB gave the following testimony. OB testified that this tenancy began on September 1, 2007. The tenants current rent payable is \$1226.00. At the outset of the tenancy the tenants provided a \$500.00 security deposit and a \$500.00 pet deposit. EM testified that as part of a regular suite inspection in October 2017; she discovered that the tenants' suite was very dirty, unkempt and had a very strong smell of pet urine. EM testified that the tenants were given 48 hours to clean the unit. EM testified that when the unit was inspected two days later there was minimal improvement and that the smell of pets and their urine was still present.

OB testified that on April 17, 2018 another suite inspection was conducted where she discovered that the tenants had 8 pets. OB testified that the tenants were advised that they had more pets than what was agreed to in their tenancy agreement and that the tenants were told that they had thirty days to remove the excess pets. OB testified that

the tenants were told that the unit was going to be re-inspected on April 26, 2018 to see if the tenants had removed the pets and if the condition of the unit improved. On April 26, 2018 EM was present at the inspection. EM testified that the smell was so potent of urine and animal smell in the unit that she had to leave the unit. EM testified that she was told by PB that they had removed several of the pets but were keeping a minimum of four pets. EM testified that the tenancy agreement submitted by the landlord for this hearing, clearly states that one pet was allowed, not four. EM testified that PB told her directly that she will be keeping at least four pets as she is allowed to as per her tenancy agreement. EM testified that PB outright refused to give up any more pets.

EM testified that on April 27, 2018 the landlord issued a One Month Notice to End Tenancy for Cause on the following grounds:

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; put the landlord's property at significant risk*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

EM testified that she wanted to work with the tenants and not have to pursue the notice to end tenancy, but the tenants were more concerned with speaking to the local newspaper rather than discuss a plan to resolve it with her. EM testified that her company's policy is to work with tenants and provide as much time as required to address a matter, but; when the tenant stated that she would keep four pets and that wasn't negotiable, EM testified she was left with no option but to issue the notice. EM testified that she has grave concerns as to the condition of the unit due to the potent smell and the amount of animal urine and feces that has saturated the floors and walls.

EM testified that this a wood frame building and is concerned that the urine, feces and overall smell has seeped into the floor and walls and will require extensive time, resources and money to correct. OB testified that on June 26, 2018 the annual fire alarm inspection was conducted. OB testified that she had observed five pets in the subject unit. OB testified that despite numerous verbal and written warning, and being served a notice to end tenancy, the tenants have not made sufficient efforts to rectify the situation. EM requests an order of possession.

NC gave the following submissions on behalf of the tenants. NC submits that the tenants had been given permission by the previous caretaker that they were allowed to have more than one pet. NC submits that numerous tenants have 5, 6 or 7 pets in the building. NC submits that the landlord has a history of allowing multiple pets in a unit and not pursuing any course of action. NC submits that the witness; VM supports that. NC submits that it is unfair for the landlord to now enforce a pet limit. NC submits that the tenants surrendered their pets to the local municipal authorities. NC submits that since the pets have been removed then the landlords notice should be cancelled.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the testimonies of EM and OB, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. I have also considered the submissions of NC. It is worth noting, that all three tenants' were present and chose not to exercise their right to give testimony and to directly dispute the allegations of the landlord.

Considered in its totality I find the landlords to be a more credible witnesses than the submissions of NC. For absolute clarity, I want to make it clear this is not a negative critique on the advocate; quite the contrary. NC conducted herself appropriately and professionally, however, as she herself stated at the outset of the hearing, she did not have any firsthand knowledge of the issues but submitted what she was instructed to say. The landlord provided consistent, logical testimony which was supported with documentary evidence where available. EM and OB admitted when they could not recall specific facts and, where appropriate, referred to their notes and documents prepared prior to this hearing to assist their recollection.

Based on the foregoing, where the evidence of the parties clashed I found that the landlord's version to be more logical, credible and consistent. In addition, I find that the documentation submitted by the landlord clearly outlines the pet restrictions and that only one pet was permitted. NC submitted that the tenants had corrected the situation yet, the tenants at no point provided proof of this to the landlord or to even call or advise them of any improvements. The advocate was not in a position to dispute the testimony of OB that the tenants still had pets on June 26, 2018.

I find that the landlord has provided numerous opportunities for the tenants to rectify the situation but the tenants chose to flagrantly disregard the warnings of the landlord, the

terms of the tenancy agreement and the issuance of the One Month Notice to End Tenancy for Cause. Based on all of the above I find that the landlord has proven that the tenant not only has breached a material term of the tenancy agreement by having numerous and excessive amount of pets that was not reduced after notice was given, but also has put the landlords property at significant risk because of those pets.

The One Month Notice to End Tenancy for cause is confirmed, it is of full force and effect. The landlord is entitled to an order of possession pursuant to section 55 of the Act. The tenancy is terminated. The landlord is also entitled to the recovery of the filing fee. The tenants' have not been successful in their application.

Conclusion

The One Month Notice to End Tenancy for cause dated April 27, 2018 with an effective date of May 31, 2018 is confirmed, it is of full effect and force. The landlord is granted an order of possession. The tenancy is terminated. The landlord is entitled to retain \$100.00 from the security deposit for the recovery of the filing fee and full satisfaction of that claim.

The tenants' application is dismissed in its entirety 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 *Residential Tenancy Act*.

Dated: July 04, 2018

Residential Tenancy Branch