



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to cancel a Notice to End Tenancy for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that in May of 2018 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Landlord's wife. The Landlord acknowledged receiving these documents.

On June 04, 2018 the Tenant filed two Amendments to an Application for Dispute Resolution, in which she applied for a monetary Order for money owed for damage or loss, plus 7 pages of evidence. The Tenant stated that these documents were personally served to the Landlord's wife on June 01, 2018. The Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On May 8, 2018 the Tenant submitted 2 pages of evidence to the Residential Tenancy Branch and on May 9, 2018 the Tenant submitted 9 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord's wife on May 17, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On June 13, 2018 the Tenant submitted 5 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord's wife on June 14, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On June 25, 2018 the Landlord submitted 4 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on June

26, 2018. The Landlord acknowledged receiving this evidence from the Landlord's wife and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Is the Tenant entitled to the compensation for moving costs?
Should the Notice to End Tenancy be set aside?

Background and Evidence:

The Landlord and the Tenant agree that:

- the tenancy began in August of 2016;
- the Tenant was permitted to have a dog and a cat in the rental unit;
- on April 30, 2018 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause;
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by June 01, 2018; and
- the Notice to End Tenancy declared that the Landlord wished to end the tenancy because the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Tenant stated that after she filed the Application for Dispute Resolution in which she disputed the Notice to End Tenancy she became concerned that she would not have time to find alternate accommodations if she was unsuccessful in her attempt to have the Notice to End Tenancy set aside. She stated that she was concerned that she would not find alternate accommodations because she has pets and her mother lives with her, who requires accommodations without stairs.

The Tenant stated that she tried to discuss the Notice to End Tenancy with the Landlord but he would not respond to her messages and would not look at her when they passed in the yard. She concluded that it would be uncomfortable to remain in the rental unit with the Landlord, who lives on the property, even if she was successful in having the Notice to End Tenancy set aside.

The Landlord stated that he served the Notice to End Tenancy because a dog the Tenant was keeping in the rental unit barked during the night, on one occasion, which disturbed his mother.

The Tenant agrees that a dog was staying in the rental unit for one night barked during the night. She stated that the Landlord did not discuss this incident with her and she does not believe it was sufficient grounds to end the tenancy.

The Tenant stated that she believes the Landlord actually served the Notice to End Tenancy because he wanted to increase the rent. She stated that the Landlord has listed the rental unit for \$1,500.00 per month.

Analysis:

Section 47(1)(d)(i) of the *Residential Tenancy Act (Act)* stipulates that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

On the basis of the undisputed evidence I find that the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on April 30, 2018 because the Landlord was disturbed by a barking dog on one occasion. I find that being disturbed by a barking dog on one occasion does not constitute an unreasonable disturbance, particularly when the Tenant is permitted to have a dog in the unit. I therefore find that the Landlord has failed to establish that he had grounds to end this tenancy.

As the Landlord has failed to establish that he had grounds to end the tenancy, I grant the Tenant's application to cancel the One Month Notice to End Tenancy. I note that this finding is irrelevant, as the Tenant has vacated the rental unit.

In adjudicating this matter I have placed no weight on the Tenant's submission that the Notice to End Tenancy was not served in good faith, but was served because the Landlord wanted to increase the rent. On the basis of the testimony of the Landlord I am satisfied that he believed the barking dog was sufficient grounds to end the tenancy.

I find the fact the Landlord is advertising the rental unit at a higher rent than the Tenant was paying does not establish that the Landlord did not serve the Notice to End Tenancy because of the barking dog. I find that the advertised rent merely reflects the current rental market and it does not, in and of itself, establish that the Notice to End Tenancy was not served in good faith.

Although I have concluded that the Landlord did not have grounds to end the tenancy, pursuant to section 47 of the *Act*, I cannot conclude that he breached the *Act* when he served the Tenant with a One Month Notice to End Tenancy. A landlord has the right to serve a One Month Notice to End Tenancy if the landlord believes there are grounds to do so, pursuant to section 47 of the *Act*. A tenant has the right to dispute that Notice to End Tenancy, pursuant to section 47(4) of the *Act* if the tenant believes the grounds to end the tenancy. In such circumstances it is left to the Arbitrator to determine whether there are grounds to end the tenancy.

I do not, in these circumstances, find that the Landlord breached the *Act* simply because he served the Tenant with a One Month Notice to End Tenancy.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant has suffered a damage or loss as a result from the landlord not complying with the *Act* or the tenancy agreement. As I have concluded that the Landlord did not breach the *Act* by serving the Tenant with a One Month Notice to End Tenancy, I find that the Tenant is not entitled to compensation for any of the costs associated to moving the rental unit. I therefore dismiss her application for moving costs.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$100.00 as compensation for the cost of filing this Application for Dispute Resolution and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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: July 05, 2018

Residential Tenancy Branch