



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELIZABETH FRY HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 7, 2018, to request an order to repair the rental unit and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matter

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims must be related to each other and unrelated claims may be dismissed. Due to the time constraints in the hearing, the Tenants’ application for an Order for regular repairs was dismissed with leave to reapply.

Both parties were informed during the hearing that the only claims that would be heard were the Tenant's application to cancel the Notice, and whether the Tenant is entitled to the recovery of the filing fee paid for her application.

Issues to be Decided

- Should the Notice issued on August 7, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of the filing fee?

Background and Evidence

The parties testified that the tenancy began on June 10, 2013, as a one-year fixed term tenancy, which converted into a month to month tenancy. Rent in the amount of \$1075.00 is to be paid by the first day of each month, which the Tenant receives a subsidy for, and the Tenant paid the Landlord a \$4512.50 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement and the attached tenancy addendum into documentary evidence.

The Landlord testified that section A of the addendum to this tenancy agreement stated that there are no dogs allowed on the premises. The Landlord testified that on June 21, 2017, the maintenance staff reported there had been dog feces present at the Tenant's rental unit. The Landlord testified that she spoke to the Tenant regarding the report from the maintenance staff, and reminded the Tenant that dogs were not allowed on the property. The Landlord testified that the Tenant had stated to her that the dog belonged to her son's girlfriend and that she would clean up the dog feces and make sure that the dog would not be brought to the rental unit again. The Landlord also testified that a letter was delivered to the Tenant, that detailed their conversation and reminded the Tenant that the no dog rule was a material term of the tenancy agreement. The Landlord provided a copy of the letter into documentary evidence.

The Landlord testified that on April 30, 2018, it was again reported by maintenance staff there had been another instance of dog feces present at the Tenant's rental unit. The Landlord testified that she again spoke to the Tenant regarding the report from maintenance staff. The Landlord testified that the Tenant had stated to her that she had been out of town and it must have been her children who allowed the dog on the property. The Landlord testified that the Tenant again agreed to clean up the dog feces and that she would ensure that the dog was not permitted on the property again. The Landlord testified that she again wrote a letter to the Tenant that detailed their

conversation and again reminded the Tenant that the no dog rule was a material term of the tenancy agreement and any further breach would affect her continued tenancy. The Landlord provided a copy of the letter into documentary evidence.

The Landlord testified that she received the third and final report of there being a dog at the Tenant's rental unit on July 31, 2018. The report was a written report from maintenance staff that stated that a dog had been found in the rental unit of the Tenant. The Landlord testified that the maintenance staff had been informed by the Tenant that she was babysitting the dog and that it did not reside in the unit. The Landlord provided a copy of the written report from maintenance staff into documentary evidence.

The Landlord testified that she issued the Notice to End the tenancy on August 7, 2018. The reasons checked off by the Landlord within the Notice are as follows:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Notice states the Tenant must move out of the rental unit by September 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Landlord testified that she is seeking an order of possession; however, she is agreeable to giving the Tenant more time to move and requests that the order of possession is dated for October 31, 2018.

The Tenant confirmed receiving the Notice on August 7, 2018, and that she applied to dispute the Notice on August 15, 2018.

The Tenant testified that there had been a dog in the rental unit for the June 21, 2018, complaint, but that when she received the complaint from the Landlord, she made sure that the dog did not come back.

The Tenant testified that she did not believe that her children had allowed a dog on the property when she was out of town for the April 30, 2018 complainant. The Tenant testified that there was a park close by and that her yard was not fenced in, so the dog feces could have come from another dog in the neighbourhood.

The Tenant testified that there had also been a dog in the rental unit for the July 31, 2018, complaint, for approximately three days. However, she had only allowed the dog there because of the wildfire situation in their area. The Tenant testified that she was

just helping a friend, as they need to go to work and they couldn't leave the dog home alone due to the high heat and smoky conditions at the time.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement, and I find that it is a material term of this tenancy that there are no dogs permitted in the rental unit or on the rental property.

I accept the sworn testimony from both parties that the Tenant did have a dog on the property on June 21, 2017. I also accept the testimony of the Landlord that the Tenant was given two separated verbal and written warnings, on June 21, 2017, and April 30, 2018, regarding the breach of this material term of the tenancy. I have carefully reviewed the written warning, and I find that the April 30, 2018 warning letter did advise the Tenant that her tenancy would be terminated if she breached this term again.

I also accept the sworn testimony from both parties that the Tenant did breach this material term again, when she permitted a dog on the property for three days at the end of July 2018.

I find that the Tenant has breached a material term of her tenancy by bringing a dog on to the rental property. Therefore, I dismiss the Tenant's application to cancel the Notice issued on August 7, 2018. I find the Notice issued on August 7, 2018, is valid and enforceable.

Pursuant to section 55 of the *Act*, I am required to grant the landlord an order of possession to the rental unit. Therefore, I am granting the Landlord and order of possession effective not later than 1:00 pm on October 31, 2018.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in her application to cancel the notice, I find the Tenant is not entitled to recover the filing fee for this hearing.

Conclusion

I dismiss the Tenant's application to cancel the Notice issued on August 7, 2018.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on **October 31, 2018**. The Tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 3, 2018

Residential Tenancy Branch