



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's request pursuant to the Residential Tenancy Act (the Act) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), issued pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlords RE and PW and the tenant KS attended the hearing. Each were given an opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords confirmed the tenant served them with her application and supporting evidence. The tenant confirmed she received the landlords' evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to recover the filing fee?
3. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on May 15, 2017. Rent is \$1,385.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 was collected and the landlords still hold it in trust. A copy of the tenancy agreement was submitted into evidence. The tenant continues to reside at the rental property.

Both parties also agreed the Notice was posted on the tenant's door on December 17, 2019. The effective date of the Notice is January 31, 2020.

A copy of the Notice was provided. The reason to end the tenancy is: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The one-page attachment to the Notice specifies that the landlords visited the rental unit on November 21, 2019 and discovered the tenant has a dog. The landlord PW testified the tenancy agreement does not allow pets. On November 25, 2019 a warning notice about the pet restriction was sent to the tenant. On December 06, 2019 the property manager was greeted by a barking dog and served a second warning notice to the tenant. On December 11, 2019 the property manager was greeted once again by a barking dog.

Copies of the two warning notices about the pet restriction dated November 25 and December 06 2019 were provided.

The landlords also submitted copies of 13 tenancy agreements (from 2003 to 2017) for tenancies prior to the start of the tenancy with KS. All of these tenancy agreements contain clauses prohibiting pets.

In addition to the details provided in the one-page attachment to the Notice, landlord PW testified the tenant affirmed in a text message sent on November 27, 2019 the dog was removed. The text message provided as evidence says: "Yes dog has been removed from the unit my mom gone back to Ontario."

The tenant affirmed she got the 9-pound Yorkshire dog in July 2019, the dog is not aggressive and causes no damage, the neighbours do not have complains about the dog, the building is pet friendly and any other possible living arrangement will cost her at least \$5,000.00 more per year. She does not intent to remove the dog.

The tenant also affirmed she did not get the second warning notice and the reason why she told the landlord in the November 27 text message the dog had left is because she felt the landlords were aggressive when they visited the rental unit.

Towards the end of the hearing the tenant affirmed she has a doctor's note (not submitted into evidence) affirming the dog is related to her medical treatment. Landlord PW also affirmed the tenant never told him the dog is a service dog or part of any medical treatment.

The tenant submitted as evidence a one-page letter that states: "When I first moved in and signed the lease I didn't have a dog, due to circumstances I now have a small yorkie. This is a pet friendly building and the dog causes no issues"

Analysis

Section 47 of the Act allows a landlord to end a tenancy for cause:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h)the tenant:

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlords served the Notice on December 17, 2019, and the tenant filed this application on December 20, 2019. I find that in accordance with Section 47 (4) of the Act, the tenant's application was submitted before the ten-day deadline to dispute the Notice.

Residential Tenancy Branch Policy Guideline 28 states:

When a landlord feels that a tenant is breaching a pets clause by having an animal on the premises, it is not uncommon for the landlord to give the tenant a written notice to get rid of the pet. If the tenant fails to do so within a reasonable time, the landlord might give the tenant a notice to end the tenancy claiming that the tenant has breached a material term of the tenancy agreement and failed to rectify the breach within a reasonable time after being given written notice to do so.

[...]

If a tenant chooses to dispute the landlord's notice to end the tenancy or opposes the landlord's application to comply, the matter will come before an arbitrator who will determine, in the case of a notice to end the tenancy, whether the pets clause in the tenancy agreement is a "material term" of the tenancy agreement. In the case of an application for an order that the tenant comply with the tenancy agreement, the arbitrator will determine whether the pets clause is an enforceable term of the tenancy agreement. In making that determination, an arbitrator will be governed by three factors: that the term is not inconsistent with the Residential Tenancy Act, the Manufactured Home Park Tenancy Act, or their respective Regulations, that the term is not unconscionable, and that the term is expressed in a manner that clearly communicates the rights and obligations under it.

The landlords served a warning notice to the tenant four days after they discovered the a pet in the rental unit and 25 days prior to issuing the Notice. In response to the warning, the tenant provided false information to the landlords that she had complied with the landlords' request to remove the pet from the rental unit.

The tenant affirmed she did not have a pet when she entered into the tenancy agreement and obtained the dog in July 2019. During the hearing, the tenant insisted she will continue to have the dog in the rental unit.

I find the prohibition of pets is a material term of the tenancy and clearly communicated in the tenancy agreement. The tenant has knowingly breached this term. I find the landlord gave the tenant a reasonable amount of time to correct the breach before the Notice was issued.

I find the form and content of the Notice complies with section 52 of the Act. I confirm the Notice and find the tenancy ended on January 31, 2020. I dismiss the tenant's application without leave to reapply.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy and the tenant's application is dismissed, I must consider if the landlord is entitled to an Order of Possession.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlords are entitled to an Order of Possession effective two days after service.

As the tenant was not successful in her application, she is not entitled to recover the filing fee.

Conclusion

I grant an Order of Possession to the landlords effective two days after service on the tenant. 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: February 27, 2020

Residential Tenancy Branch