



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT, RP, AS, OLC, FFT

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord perform repairs pursuant to section 33;
- An order allowing the tenant to assign or sublet the rental unit pursuant to section 65;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee from the landlord pursuant to section 72;
- Authorization to change the locks to the rental unit pursuant to section 70; and
- Cancellation of a 1 Month Notice to End Tenancy for Cause pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials including the notice of application, all evidence, the 1 Month Notice dated January 14, 2020 and amendments to the application. Based on the testimonies I find that both parties were served with all relevant materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

If the tenancy continues is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed term tenancy began on February 1, 2019. The monthly rent is \$2,100.00 payable on the first of each month. A copy of the written tenancy agreement signed by both parties was submitted into evidence.

There is an addendum to the tenancy agreement consisting of two pages of 12 additional clauses. The addendum was signed and dated on the same date that the main tenancy agreement was entered, December 20, 2019. The clauses pertinent to the present dispute reads as follows:

5. Tenant may have 2 pets (landlord fill in upon move in) Upon move in or anytime during tenancy. If tenant wants to have a pet, written permission from landlord is required. Landlord can restrict the size, kind and number of pets and can make other reasonable pet-related rules that the tenant must follow. If permission is given, tenant is responsible to provide full pet deposit prior to acquiring pet. Tenant is responsible for pet maintenance inside and outside the residence. Tenant shall, at tenant's expense, maintain cleanliness of yard, fill in holes made by pet and fence in yard to maintain security of pet. Pet is not permitted to run freely outside of tenant yard.

9. No additional occupancies/Vehicles: Only tenants / vehicles named on agreement may occupy rental unit. Additional occupancies or vehicles need prior written permission from landlord in order to occupy residence. Please inform landlord if you have visitor staying at residence for a period longer than 2 weeks. Permission is at landlord's digression.

The landlord issued the tenant a letter dated January 6, 2020 advising the tenant that they were in breach of the above two terms of the tenancy as the tenant was operating a pet care and AirBnB business in the rental suite without their authorization or consent. The landlord states in their letter that while the tenant is permitted to operate a business in the rental property, the nature of the business chosen by the tenant breaches the terms of the tenancy agreement as they are housing multiple occupants and pets. The

tenant was given a period of 1 week to discontinue the unauthorized use and provide written confirmation to the landlord that they have ceased the violation.

The landlord submits that the tenant did not curb their behaviour and therefore the landlord issued a 1 Month Notice on January 14, 2020. The reasons provided on the 1 Month Notice for the tenancy to end are:

- Tenant or a person permitted on the property by the tenant has
 - Significantly interfered with or unreasonably disturbed 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.

The tenant confirmed that they are operating a AirBnB as well as a pet business in the rental unit. The tenant submits that they were granted authorization to conduct the businesses by the landlord when they first entered the tenancy agreement. The tenant explains that the written tenancy agreement and addendum are deficient as they do not accurately reflect the agreement between the parties.

The landlords gave testimonial evidence that while they became aware of the tenant operating a commercial business in the rental property, allowing guests and animals to stay, they did not provide authorization to the tenant. The landlords dispute the tenant's interpretation of events that they had provided authorization to the tenant from the outset and submits that the written evidence clearly contradicts the tenant's testimony.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlords must demonstrate that the tenant breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline 8 defines a material term as a term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

I find that a limit on the number of occupants and pets in a rental unit to be a material term of the tenancy agreement. I accept the landlord's evidence that a restriction on the number of occupants is necessary to ensure that the wear and tear on the rental property is limited. I accept the documentary evidence of the parties that the tenancy agreement contains a clear clause in the addendum limiting the number of occupants and pets. I note that the number of pets allowed for this tenancy is hand written by the parties with a note defining pets as dogs and cats.

I accept the evidence of the parties that the tenant was operating an AirBnB and pet minding business in the rental suite which involved allowing multiple occupants and animals to access the property and reside there for varying periods.

I accept the landlord's evidence that the landlord informed the tenant in writing by the letter of January 6, 2020 that operating an AirBnB and pet minding business breached a material term of the tenancy agreement and addendum. The tenant was given a deadline by which time the problem must be fixed and the landlord informed the tenant of the consequences of failing to fix the problem.

I do not find the tenant's position that they had the authorization of the landlord to operate their businesses in contravention of the written material terms to be credible. The correspondence from the landlord clearly indicates that while the landlord allowed the operation of a business by the tenant, this was not a blanket approval that the tenant may conduct any money-making venture out of the rental suite. I do not find it reasonable that if the parties intended for the tenant to be allowed multiple occupants and animals that they would have entered into a tenancy agreement which explicitly restricts the tenant's right to allow occupants and pets. The tenancy agreement and addendum are not simply generic forms accepted as is but contain hand written notations. If the parties intended for the tenant to be allowed additional occupants or a higher number of pets it is reasonable that they would have made some notation of their intentions on the document.

I find the tenant's recollection of their agreement to contradict the documentary evidence, the landlord's testimony and what would be reasonable under the circumstances. I do not find that there was an agreement between the parties allowing the tenant to freely breach the terms of the written agreement.

Accordingly, I find that the landlord has shown on a balance of probabilities that there is cause to end this tenancy and dismiss the tenant's application to cancel the 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlords' 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice clearly provides the reasons for ending the tenancy.

As I have dismissed the tenants' application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession

As this tenancy is coming to an end I find it unnecessary to make a finding on the portions of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant seeks a monetary award of \$9,027.28 claiming that the landlord interfered with their ability to find occupants for their AirBnB business and that they were overcharged for the rental unit considering its size and amenities. I find that the tenant's submissions on this point to merely be more in the nature of complaints rather than evidence of an actual breach on the part of the landlords. I find that the tenant's subjective complaints and dissatisfaction is insufficient evidence to establish a basis for a monetary award. Accordingly, I dismiss this portion of the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises 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: March 10, 2020

Residential Tenancy Branch