



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF, CNC, RP, LAT, OLC, LRE

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the initial documentary evidence by posting it to the rental unit door on February 18, 2020. Both parties also confirmed the landlord served the tenant with the

supplementary documentary evidence package by posting it to the rental unit door on March 12, 2020. Both parties confirmed the tenant served the landlord with her notice of hearing package for each of the landlords via Canada Post Registered Mail on January 23, 2020. Both parties also confirmed the tenant served each of the landlords with the submitted documentary evidence via Canada Post Registered Mail on February 27, 2020 and on February 28, 2020. Neither party raised any service issues.

I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

At the outset, the applications of both parties were clarified. The landlord seeks an order of possession for cause; a monetary order for unpaid rent and for money owed or compensation for damage or loss and recovery of the filing fee.

The tenant seeks an order to cancel the 1 month notice for cause; an order for the landlord to make repairs; an order authorizing the tenant to change the locks; an order for the landlord to comply with the Act, Regulations or Tenancy Agreement; an order to suspend or set conditions on the landlord's right to enter; and a monetary claim for money owed or compensation.

The landlord clarified that the monetary portion of the claim are for things unrelated to the notice to end tenancy for cause.

The tenant clarified that the requests for repairs, authorization to change locks, an order for the landlord to comply, an order to suspend or set conditions on the landlord's right to enter and the monetary claim for loss of quiet enjoyment were unrelated to the 1 month notice.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the additional requests made by each party are unrelated to the issue of possession based upon the 1 month notice. As these sections of the applications by both parties are unrelated to the main section which is for an order of possession for cause and to cancel the notice to end tenancy issued for cause, I dismiss these sections of the claims for both parties with leave to reapply.

The hearing shall proceed on the landlord's request for an order of possession and recovery of the filing fee; and the tenant's request to cancel the 1 month notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recovery of the filing fee?

Is the tenant entitled to an order cancelling the 1 month notice?

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 / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that on January 16, 2020, the landlord served the tenant with the 1 Month Notice dated January 16, 2020 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of February 29, 2020 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The details of cause provided state:

*Jan 9th/10th 12:05-1:11am – see lake Okanagan incident report attach two pages.
See next page.*

During the hearing the landlord clarified that there was no apparent illegal activity other than a noise complaint. As such, this portion of the landlord's reason for cause is dismissed.

The landlord also clarified that the reason for cause selected on the 1 month notice dated January 16, 2020 was for the tenant failing to comply with the Strata Bylaws of the property. The landlords stated that on January 14, 2020 a warning letter (Notice of

Complaint) was issued by the Strata that the landlord's tenant was found allowing her dog off leash and the tenant has failed to pick their excrement contrary to the strata bylaws.

The tenant confirmed receipt of the notice and that since this incident had occurred that no further issues have been repeated by the tenant. The landlord argued that the tenant has been cited for repeating this issue (dog off leash and failing to pick up excrement) in an email from the property manager on March 11, 2020. The tenant disputed this stating that she was contacted by the property manager and that there were no further issues upon her last contact with the property manager. The landlord stated that they do not have any evidence to support this claim.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the evidence of both parties that the tenant was properly served with the 1 month notice dated January 16, 2020 by posting it to the rental unit door on January 16, 2020.

Both parties confirmed that a notice was issued by the strata in which the tenant was found to have allowed her dog off leash and had failed to pick up excrement from the dog which took place on January 14th contrary to the bylaws.

The landlord has claimed that the tenant failed to comply with the notice and has since repeated the bylaw infraction. The landlord has relied upon an email received from the property manager in which it states, "...I have received further complaints about the dog being off leash..."

The tenant has disputed the landlord's claim that there has been a second incident regarding her dog being off leash and/or failing to pick up excrement. The tenant stated that she has complied with the first notice.

The landlord was not able to provide any supporting evidence of further complaints concerning an off leash dog and/or failing to pick up excrement.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally

probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, both parties have confirmed that a notice was issued by the strata that the tenant had failed to comply with the bylaws. The landlord has claimed that the tenant has since been found to have not complied as per an email from the property manager. The tenant has disputed this claim stating that she had been informed recently by the property manager that there were no outstanding issues. The landlord was only able to refer to this email and was not able to provide any supporting evidence or details on the claims that the tenant continued to fail to comply with the bylaws on this off-leash dog issue. As such, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord as the landlord has failed to provide sufficient evidence to support his claim that there was additional complaints of the tenant's dog being off-leash. The tenant's request to cancel the 1 month notice dated January 16, 2020 is granted. The 1 month notice is set aside and the tenancy shall continue.

Conclusion

The landlord's application is dismissed 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: March 20, 2020

Residential Tenancy Branch