



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, FFL, MNDCL-S**

Introduction

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

- An Order of Possession for Cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenant did not attend this hearing, although I left the teleconference connection open until 10:00 a.m. to enable the tenant to call into this hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by property manager, MW ("landlord"). The landlord testified that the tenant was served the Notice of Hearing package via registered mail on January 30, 2020. The landlord provided a tracking number, recorded on the cover page of this decision. I find the tenant has been deemed served with the Notice of Hearing package five days later, on February 4, 2020 in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application or permit an application to be amended. During the hearing, the landlord sought to amend his application to seek recovery of bylaw fines from the tenant for bylaw fines that were continuing to accrue at the amount of \$200.00 every seven days. This amendment was allowed in accordance with Rule 4.

Issue(s) to be Decided

Is the landlord entitled to:

- An Order of Possession for Cause pursuant to sections 47 and 55;

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on January 18, 2019 with rent set at \$3,500.00 per month payable on the first day of the month. A security deposit of \$1,750.00 was collected by the landlord and the landlord continues to hold it. A copy of the tenancy agreement with addendums was provided as evidence. A clause in the addendum reads:

There are no pets permitted within this rental unit. No Smoking, no EXCEPTIONS.

The landlord testified that keeping pets is a violation of the bylaws of the strata corporation. On July 8, 2019, the landlord received a warning letter from the strata corporation advising him that he would be fined \$200.00 every 7 days until the pet is removed from the unit. His first fine came on July 29, 2019 and he continues to receive the fines to this date every 7 days. As of March 9, 2020, the fines total \$6,600.00. Statements of account were provided as evidence to corroborate this testimony.

The landlord testified that when he got the first warning letter, he called the tenant and the tenant told him the dog was her sister's and it's an 'emotional dog'. He followed it up with an email telling the tenant she may want to contact the strata manager directly on July 22nd. On September 30th, the landlord sent another email to the tenant asking her to provide proof the dog is no longer in the unit or certification the dog is an 'emotional dog'. On October 31st, the landlord met the tenant and gave her documents provided by the strata corporation. Still, the tenant did not have proof of the dog being an 'emotional dog'.

On November 9th, the landlord gave the tenant a final notice that she is in violation of the strata's bylaw 3(3) which states: *an owner, tenant or occupant must not keep any pets on a strata lot other than aquarium fish and/or small caged birds*. The clause in the addendum regarding pets was also reiterated and the landlord gave the tenant 30 days to correct the situation. On December 9, 2020, the tenant did not remove the dog or provide the landlord or strata corporation with proof the dog was a certified 'emotional' dog and the landlord served the tenant with a One Month Notice To End Tenancy for Cause by registered mail. The tracking number for the mailing is recorded on the cover page of this decision.

A copy of the Notice was provided. The reason for ending 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*. No details of cause was provided, however the landlord testified the tenant knew the details already, based on the final warning provided to her on November 9th.

Analysis

- Landlord's application for an order of possession

I find the tenant is deemed to have been served with the One Month Notice To End Tenancy for Cause on December 14, 2020, five days after mailing, pursuant to sections 88 and 90 of the *Act*.

Sections 47(3)(4) and (5) of the *Act* state:

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and

(b) must vacate the rental unit by that date.

Based on undisputed testimony of the landlord, and the documents provided, I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 10 days, by December 24th, or attend the scheduled Dispute Resolution Hearing. Since the tenant did not file for dispute resolution, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit. In accordance with section 53 of the *Act*, the effective date of January 15, 2020 is corrected to January 31, 2020, the earliest possible day the Notice could take effect. As the corrected effective date has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

I further make the finding that the tenant failed to correct the pet term as stated in the tenancy agreement addendum regarding pets within a reasonable time after written notice to do so, contrary to section 47(1)(h) of the *Act*.

- Landlord's application for a monetary order

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

The landlord provided undisputed testimony that the tenant was aware of the fines being levied against the landlord due to the dog and did nothing to prevent it. The landlord has provided proof to corroborate his testimony that the bylaw fines from the strata corporation total \$6,600.00 as of March 9th. I find that the landlord suffered loss in the amount of **\$6,600.00** resulting from the tenancy and the tenant is ordered to compensate the landlord for that amount pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security and pet damage deposits totaling **\$1,750.00**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit in partial satisfaction of the monetary order.

Item	Amount
Strata bylaw fines to March 9, 2020	\$6,600.00
Filing fee	\$100.00
Less security deposit	(\$1,750.00)
Total	\$4,950.00

Conclusion

Pursuant to section 55(2)(b), I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of **\$4,950.00**.

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 31, 2020

Residential Tenancy Branch