



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47.

Both tenant HM and landlord BY attended the hearing and had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

As both parties were present service was confirmed. The landlord confirmed receipt of the notice of hearing on February 05, 2020. The landlord affirmed he served his evidence by registered mail on March 18, 2020. The tracking number of the registered mail is on the cover page of this decision. The tenant affirmed she did not receive the mail with the evidence. I find the tenant is deemed served the evidence on March 23, 2020 in accordance with sections 89(1)(d) and 90(a).

Preliminary Issue – Amendment of the Claim

The tenant amended the application to change the tenancy address (the updated address is reproduced on the cover of this decision). Section 64(3)(c) of the *Act* allows me to amend the application to update the address of the parties, which I have done.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. 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 March 01, 2007. Rent is \$1,233.00 per month, due on the first day of the month. There are no arrears. At the outset of the tenancy a security deposit of \$415.00 was collected and the landlord still holds it in trust. The tenant continues to reside at the rental unit.

Both parties also agreed the Notice was delivered by registered mail received by the tenant on January 27, 2020. The effective date of the Notice is March 01, 2020.

A copy of the Notice was provided. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has:
 - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the rental unit/site or property/park.
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The details of cause section of the Notice was not completed and there was no document served with the Notice.

The tenant affirmed she did not understand the reasons why the Notice was issued, as no details of the cause or document were provided with the Notice. However, she was aware she had not paid the pet damage deposit when she received the Notice and knew this was one of the reasons of the Notice.

The landlord affirmed the tenant smokes and disposes her cigarette butts on the garden in front of her rental unit. The landlord asked the tenant to use an ash tray, but the tenant refuses to do so. Photographs of cigarette butts dated June 13, 2008 and February 28, 2020 were submitted into evidence.

The tenant affirmed she uses an ash tray and the tenant in the unit above hers is the one responsible for throwing cigarette butts on the garden in front of her rental unit.

The landlord affirmed the tenant does not throw her garbage in the garbage bin assigned to her rental unit. There is always a large amount of garbage around her garbage bin and this is a sanitary issue for her and for the tenants. Photographs of garbage bins with garbage around it dated September 18, 2018 and December 02, 2019 were submitted into evidence.

The tenant affirmed she bought her own garbage bin, as the landlord did not provide her with one. The tenant affirmed the other tenants are the ones responsible for the garbage around her bin. The tenant also affirmed that since three weeks ago she and the other tenants are using a white plastic to cover the garbage bin and the birds and raccoons are no longer around.

The landlord affirmed the tenant removed a large section of her carpet and put a door mat to hide it. A photograph from January 06, 2020 showing a carpet mutilation and a move-in inspection form were submitted into evidence. The move-in inspection form, signed by the tenant and landlord on March 02, 2007, indicates the carpet is in satisfactory conditions throughout the rental unit.

The tenant affirmed there was a water leak coming from other rental unit that caused the carpet to be mold and the tenant had to remove a part of the carpet seven years ago.

The landlord affirmed the tenant burns candle in her rental unit. This is a fire safety issue and the candle smoke damages the rental unit. The tenant affirmed she burns candles four times per year and the candles are always in a glass.

The landlord affirmed the smoke detector was tampered by the tenant. The tenant affirmed the smoke detector was going off in the middle of the night and she broke it seven years ago.

The landlord affirmed he discovered the tenant has pets in an inspection that happened in August 2019. On August 21, 2019 the landlord sent a text message (submitted into evidence) to the tenant asking her to pay the pet damage deposit and to have only one pet. The tenancy agreement was also submitted into evidence, indicating there was no pet damage deposit. In September the landlord conducted a new inspection, after giving the proper 24 hour notice. Photographs were taken in that inspection (and submitted into evidence) showing cat food and a cage for rabbits.

The tenant affirmed she has one cat since “October or November 2019” and she did not get the text message asking for the security deposit. The tenant affirmed on December 22, 2019 the landlord asked her in a phone call to pay \$612,50 for pet damage deposit. The tenant will pay the security deposit if the tenancy continues. The tenant is aware she is late with the payment of the pet damage deposit.

The tenant affirmed she is on disability and can not move out of the rental unit.

Analysis

The landlord served the Notice on January 27, 2020, and the tenant filed this application on February 04, 2020. 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.

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:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

[...]

(d) The tenant or a person permitted on the property by the tenant has:

[...]

(iii) Put the landlord’s property at significant risk.

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

With regard to the requirement to provide a pet damage deposit, Section 20 of the Act states:

20 A landlord must not do any of the following:

[...]

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

The landlord discovered the tenant had a pet in August 2019 and requested the tenant to pay a pet damage deposit. Residential Tenancy Branch Policy Guideline 31 states:

When is the deposit given?

A landlord may require a pet damage deposit either when the tenant has a pet at the start of a tenancy or later, at the time a tenant acquires a pet and the landlord's required

agreement is obtained.

Sometimes a tenancy agreement might already provide that a tenant will pay a pet damage deposit on acquiring a pet, in which case, the deposit would be paid then.

[...]

How much is the deposit?

A landlord can require a deposit of up to one-half month's current rent as a pet damage deposit, regardless of the type or number of pets. This amount is in addition to any security deposit that may also be required by a landlord.

Based on the tenant's testimony, I find the tenant was asked to pay the pet damage deposit on December 22, 2019 and did not pay it. The Notice was served on January 27, 2020, after the 30 day deadline the tenant had to pay the pet damage deposit provided in Section 47(1)(a) of the Act.

I find the tenant was aware of this reason to end tenancy mentioned on the Notice and was able to address it during the hearing. She acknowledged she owed the pet damage deposit and had not paid it.

I find the refusal of the tenant to pay the pet damage deposit within 30 days from when the landlord required it is a reason for the landlord to end the tenancy, pursuant to section 47(1)(a) of the Act. I make no findings regarding the other reasons of the Notice, as the refusal of the tenant to pay the pet damage deposit is enough to confirm the Notice.

I find the Notice indicates a valid reason to end the tenancy, it has an effective date and is properly completed and signed by the landlord. Thus, 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 March 01, 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 landlord is entitled to an Order of Possession effective two days after service.

I warn the tenant that may be liable for any costs the landlord incur to enforce the order of possession.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective two days after service. 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. The Order of Possession should be served immediately.

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: April 15, 2020

Residential Tenancy Branch