



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Housing and Health
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") an Order of Possession for cause, pursuant to section 55.

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

The tenant confirmed receipt of the landlord's dispute resolution package and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence package. The tenant did not submit any written evidence for this hearing.

The tenant confirmed that he was served with the landlord's 1 Month Notice to End Tenancy for Cause dated March 12, 2020, which was posted on his door the same date. The landlord entered into written evidence a copy of that Notice. Accordingly, I find the tenant deemed served with the 1 Month Notice, pursuant to section 88 of the *Act*, on March 15, 2020, three days after posting.

Issues

Is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on December 6, 2018, with monthly rent currently set at \$375.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$187.50, which the landlord still holds.

The landlord served the notice to end tenancy providing the following grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

It was undisputed by both parties that the tenant has allowed numerous rats into his rental unit without the landlord's permission. The landlord testified that this is a breach of a material term of the tenancy agreement as rats are a major problem for the building, and has posed a serious problem in the past for the landlord and other tenants. The landlord testified that the tenant's rats have reproduced, and have entered the common areas as well as the rental units of other tenants. The landlord expressed concern about the extensive damage to the building caused by the rats, including bitten wires which pose a fire hazard and costly damage to wires, numerous holes in the walls, as well as the physical harm the rats have caused other tenants. The landlord testified that a tenant had to move after being bitten by one of the rats. The landlord testified that they had attempted to work with the tenant to alleviate the problem such as offers of pest control, and the tenant was given written warning on February 28, 2020 before the issuance of the 1 Month Notice on March 12, 2020. The landlord testified that the tenant refused access to the landlord after giving written notice to enter his rental unit, or offers to assist in dealing with the rats. The landlord testified that the rats would reproduce every three weeks, and after exhausting their options they have issued the tenant a 1 Month Notice and are seeking the end of this tenancy.

The tenant testified that the rats are difficult to capture and remove, and that he is currently working on dealing with the rat problem. The tenant testified that he is now using traps, and they are working. The tenant testified that the landlord did give him notice of entry, but that he had a guest during the visits, and had left the door open for the landlord. The landlord's witness JK responded that on both occasions, the tenant did open the door, but refused the landlord entry into the rental unit.

The tenant requested more time in order to deal with the rats.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice.

A party may end a tenancy for the breach of a material term of the tenancy but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term

was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach...must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy...*

In this case, the landlord has maintained that the tenant's failure to obtain approval from the landlord to allow pet rats into the building constituted a breach of a material term of the Agreement. The landlord produced documentary evidence to support that the landlord had issued written warnings to the tenant. The landlord also provided detailed testimony about the damage caused by the rats, as well as the reason why this constituted a material term of the tenancy agreement. The landlord testified that the rats posed a serious problem for the landlord and other tenants in the building, and the tenant was given ample opportunity to respond to the landlord's warnings. The tenant did not dispute that he had allowed rats into the building, but requested more time to deal with the problem.

In considering this matter, I note that although the tenant did not dispute that he had allowed rats into the building, and that these rats have reproduced to the extent that the tenant can no longer provide confirmation of how many rats are now in the building. The tenant also did not dispute that the rats have entered common areas and other rental units through holes in the walls. I find that the landlord provided detailed testimony about how the rats have caused, and continue to cause, a serious problem for the landlord and other tenants, and even pose a serious health and safety risk due to the

bitten wires and electricals caused by the numerous rats. Although disputed by the tenant, I find that the landlord gave the tenant multiple opportunities to deal with the problem, and after several months I find that the tenant was unable to provide confirmation that the rat problem has been dealt with. For the reasons outlined above, I find that the landlord has established that the tenant's allowance of rats into the building constitutes an ongoing breach of a material term of the Agreement, which has not been remedied despite multiple written warnings from the landlord.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice to be valid. 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.

Section 47 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. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected, effective date of the 1 Month Notice, April 30, 2020.

In this case, this required the tenant and anyone on the premises to vacate the premises by April 30, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession. I find that the landlord's 1 Month Notice is valid and effective as of April 30, 2020.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement 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: July 21, 2020

Residential Tenancy Branch