



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Asset Management Corp. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

The tenant filed an Application for Dispute Resolution on July 30, 2020 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the "One Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on September 4, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, forwarded to them by the tenant via registered mail. This included the evidence prepared by the tenant. The tenant confirmed receipt of the landlord's prepared evidence in advance of the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One Month Notice to End Tenancy for cause?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord and tenant both agreed that there is a tenancy agreement in place, signed by the tenant on October 29, 2011, and the then-landlords, on October 30, 2011. The tenant confirmed that the rent amount is \$900.00 per month. The security deposit paid by the tenant was \$250.00 and the pet damage deposit was \$200.00. The landlord confirmed that the property was sold to their clients in October 2018.

The landlord provided documentary evidence that speaks to the history of the tenancy. The tenant lives in the basement unit of the property. Two sets of upstairs tenants vacated due to odours emanating from the tenant's unit. This occurred in January-February 2019 and April-May 2020, making both of those tenancies brief in duration. The landlord added that a more recent showing of the upstairs suite was met with potential tenants who turned away at the first detection of the odour.

The landlord presented that the second set of tenants upstairs received a letter from their employer outlining the issue of the odour. This was of such a degree that it put the upstairs tenant's employment at risk.

The landlord issued the One Month Notice dated July 14, 2020, with the effective date for the tenant to move out on August 31, 2020. The landlord indicated the following reasons on page 2:

- ☐ Tenant or a person permitted on the property by the tenant has:
 - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☐ put the landlord's property at significant risk

The form on page 3 provides space for the landlord to provide details. The landlord did so here by providing a timeline since February 2020 on the issue of pet clean up. It states: "You have failed to correct the Breach and are currently jeopardizing the landlord's investment as the adjoining unit is unrentable and uninhabitable due to the significant odour . . . permeating from your unit to the adjoining rental unit above."

In the hearing the landlord spoke to the issue at hand and referred to two complaints made by prior tenants. These identify the odour issue as being that which caused them to end their tenancies.

The tenant submitted that an end of tenancy is unjust. They submitted there are other issues at play. Their rent is quite low in comparison to other units and thus the landlord wants to evict. Additionally, other buildings in the area are being torn down; therefore, the landlord is choosing to evict them in this manner. The tenant also takes issue with the landlord serving the One Month Notice to them by entering the rental unit.

The landlord stated that the tenant has not more recently paid rent for the unit. Both the August and September 2020 rent amounts were not paid at the time of the hearing.

Analysis

The *Act* section 47(1) contains the following provisions:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
 - (d) the tenant or a person permitted on the residential property by the tenant has
 - i. significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - iii. put the landlord's property at significant risk.
 - . . .

Section 47(4) of the *Act* states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the One-Month Notice was issued pursuant to section 47 and I accept the landlord's evidence that they served this document to the tenant on July 14, 2020.

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy

I find the landlord has met the onus to show that, more likely than not, the tenant has jeopardized the health or lawful right of another occupant or landlord. I find the evidence shows that a palpable odour was present on another unit's occupant at their own workplace. For this, they received a warning letter from their employer. I find the odours from the tenant's unit impact another occupant's lawful right to seek and maintain employment.

I find the situation was unabated after requests from the landlord to the tenant. I find that by the tenant's failure to pay heed to the issue, they jeopardized the health and lawful rights of other occupants.

The tenant's application to cancel the One Month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

By this provision, I find the landlord is entitled to an Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 4, 2020

Residential Tenancy Branch