



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the tenant confirmed that they received the 1 Month Notice posted on their door by Landlord TM (the landlord) on January 7, 2021, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by registered mail on January 22, 2021, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. As the tenant confirmed that they had received copies of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

The tenant provided their written evidence the day before this hearing. Although the landlord had read an email from the tenant on the morning of the hearing, the landlord had not yet had an opportunity to review any of the digital evidence the tenant had submitted to the landlord. Since the tenant's evidence was not provided to the landlord within the 14 day period established by the RTB's Rules of Procedure and the landlord had not had a chance to review this material, I advised the parties that I would be unable to consider any of the tenant's late written or digital evidence.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The parties signed two one-year fixed term Residential Tenancy Agreements for a rental suite in a multi-tenanted rental building. The original fixed term was from September 1, 2018 until August 31, 2019. When the subsequent one-year fixed term expired on August 31, 2020, the tenancy continued on a month-to-month basis. Monthly rental is currently set at \$1,537.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$750.00 security deposit paid on August 29, 2018.

The landlord entered into written evidence copies of letters of October 13, 2020 and December 16, 2020 in which they warned the tenant that the tenant's continuation of playing harp music and singing in the rental unit for extended periods of time could lead to the issuance of a notice to end this tenancy.

When the landlord continued to receive complaints about the tenant's failure to abide by the requests made in the warning letters, the landlord issued the 1 Month Notice, seeking an end to this tenancy by February 28, 2021.

The parties agreed that the tenant has paid rent for March 2021. The landlord confirmed that they have accepted the tenant's payment for March 2021, enabling the tenant to remain in the rental unit until at least March 31, 2021.

The 1 Month Notice identified the following reason for ending this tenancy:

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

Analysis

A landlord may end a tenancy for breach of a material term 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 tenancy agreement, as opposed to the consequences of the breach.

Residential Tenancy Branch Policy Guideline 8 provides the following guidance to arbitrators in considering a landlord's attempt to end a tenancy on the basis of a tenant's breach of a material term of their tenancy agreement.

...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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material...

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof...

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 30, 2021, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. The tenant agreed to make their final rental payment of \$1,537.00 to the landlord by the end of the day on April 1, 2021, and the landlord agreed to accept this payment from the tenant.
3. The landlord agreed to provide the tenant with a positive reference to be used in the tenant's search for alternative accommodations with prospective landlords.
4. Both parties agreed that the tenant will be allowed to play harp music and sing up to two hours per day between 9:00 a.m. and 5:00 p.m., plus up to two hours per

day on two occasions per week between the hours of 5:00 p.m. and 9:00 p.m., so as to enable the tenant to practice with their musical partner.

5. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

In order to implement the settlement reached between the parties, I issue the following orders:

1. I order the tenant to make a payment of \$1,537.00 to the landlord by the end of the day on April 1, 2021.
2. I order the landlord to accept the tenant's payment of \$1,537.00 for use and occupancy only and not to extend this tenancy beyond April 30, 2021.
3. I order the landlord to provide the tenant with a positive reference to be used in the tenant's search for alternative accommodations with prospective landlords.
4. I order the tenant to restrict their playing of harp music and singing to a maximum of two hours per day between the hours of 9:00 a.m. and 5:00 p.m. I further order that the tenant be allowed to play harp music an additional two hours twice per week between the hours of 5:00 p.m. and 9:00 p.m. in the event that they need to practice with their musical partner after 5:00 p.m.

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 16, 2021

Residential Tenancy Branch