



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by the tenant to cancel a 1 Month Notice to End Tenancy for Cause dated January 17, 2021 (1 Month Notice). The filing fee was waived for this application.

The tenant, an advocate for the tenant, SA (advocate) and the landlord attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form and make submissions to me. The parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Issue to be Decided

- Should the 1 Month Notice cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2019 and reverted to a month to month tenancy after May 31, 2020. Monthly rent in the amount of \$1,100.00 is due on the first day of each month. A security deposit of \$550.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The tenant confirmed that they received the 1 Month Notice on January 17, 2021. The tenant applied to dispute the 1 Month Notice on January 21, 2021, which is within 10 days of the 1 Month Notice being dated and served. The effective vacancy date listed on the 1 Month Notice was February 28, 2021.

The 1 Month Notice lists two causes, namely:

1. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Regarding cause 1 listed above, the landlord testified that the tenant disconnected a hard-wired smoke detector, which was discovered during an inspection of the rental unit on October 11, 2020. A photo was presented which shows a disconnected smoke alarm hanging by just one wire from the ceiling. The tenant did not dispute disconnecting the smoke alarm during the hearing. The landlord stated that the smoke alarm was reconnected during the inspection and has not found to be disconnected again since October 11, 2020. The landlord stated that there have been two inspections of the rental unit since October 2020, which were conducted on January 16, 2021 and in March 2021.

In addition, the landlord stated that the tenant is hoarding in the rental unit and that during the inspection on October 11, 2020, there were many bags full of discarded fast-food containers and according to the photo evidence presented during the hearing the first photo appears to show hoarding in the rental unit as the floor cannot be seen and there are wrappers, bottles, cans and coffee cups and drink containers filling an entire table and many food packages strewn across other items such as shopping bags, blankets, stuffed animals, and papers. There is a mattress without any covers on it laying directly on the carpet in photo 4 and at least seven full black garbage bags on the floor and mattress. Only a very small portion of the carpet can be seen in photo 4.

In photo 11, the carpet in a different room is visibly stained and in photos 12, 13 and 14, there is many items on the bathroom floor including cans, papers, packages, clothing, bags, bottles, and garbage.

The landlord stated that they returned on January 16, 2021 for a second inspection (second inspection) of the rental unit and photos were presented to show the condition of the rental unit during the second inspection. In photo 1, the kitchen appears to be the same or worse condition as the October 11, 2020 photos. For instance, on the kitchen stove there are 4 electric stove elements (elements). The tenant placed a large green plastic bowl on an element and a plastic tortilla wrapper on another element and has a plastic water bottle right next to 2 elements on the stove, all of which appear to be a fire hazard. The tenant was asked if they saw anything wrong in photo 1, and they denied that there was anything wrong about what was showing in photo 1.

Regarding the laundry area, the photos dated January 16, 2021 show a rental unit in worse condition, with excessive clothing on the floor even compared to the already cluttered floor showing on the October 11, 2020 inspection photos.

The advocate stated that the tenant was not aware that they could ask for more garbage cans and that a behaviour plan has been put into place and that a social worker has been called.

While the parties provided other information related to babysitting in the rental unit and the landlord considering that operating a business, a daycare, I find that I do not need to review further evidence below as I am satisfied that the 1 Month Notice is valid for the reasons I will set out below.

Analysis

Based on the above, the documentary evidence and the testimony of the parties, and on a balance of probabilities, I find as follows.

The 1 Month Notice has an effective vacancy date of February 28, 2021, which has passed. The tenant disputed the 1 Month Notice within the ten-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice. Once a 1 Month Notice is disputed, the onus of proof is on the landlord to prove that the 1 Month Notice is valid.

One of the causes the landlord has alleged is that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. Firstly, I find

that the photos support that the tenant has been hoarding in the rental unit and has had excessive garbage in the rental unit in both the October 11, 2020 and January 16, 2021 inspection photos. Secondly, and most concerning, I find the tenant has placed highly flammable plastic items on the kitchen stove elements as a place to store items which is not only unreasonable but what I find supports that tenant has placed the landlord's property at significant risk of fire. In support of my finding is the fact that the tenant had also previously disconnected, without permission, a hard-wired smoke detector. I find the landlord provided the tenant with sufficient time between October 2020 and January 2021 to correct the hoarding-related issues, which I find the tenant failed to correct and actually made worse in the kitchen and laundry area.

Given the above, I find the landlord has provided sufficient evidence to support that the 1 Month Notice is valid and as a result, **I dismiss** the tenant's application to cancel the 1 Month Notice. I find it is not necessary to consider the second cause listed on the 1 Month Notice as a result.

Pursuant to section 55 of the Act and considering that I find the 1 Month Notice complies with section 52 of the Act, I must grant an order of possession to the landlord. Therefore, I find the tenancy ended on February 28, 2021, the effective date listed on the 1 Month Notice. As money was paid for use and occupancy for April 2021, I grant the landlord an order of possession effective **April 30, 2021 at 1:00 p.m.**

As the filing fee was already waived, it is not granted.

Conclusion

The tenant's application is dismissed without leave to reapply. The 1 Month Notice issued is valid and is upheld. The tenancy ended on February 28, 2021.

The landlord is granted an order of possession effective April 30, 2021 at 1:00 p.m. This order must be served on the tenant and then may be filed in the Supreme Court of British Columbia and enforced as an order of that court. The tenant may be held liable for the costs associated with enforcing the order of possession if they fail to vacate as required.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 20, 2021

Residential Tenancy Branch