



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C21 Kootenay homes and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. The landlord acknowledged receipt of the tenant’s Application for Dispute Resolution and Notice of Hearing.

The teleconference line indicated both parties were in continuous attendance throughout the hearing. However, the tenant did not participate in the hearing for 8 minutes after the hearing had been underway for 18 minutes. The tenant did not respond when addressed. When the tenant resumed participation, she explained that she had not heard anything for the 8 minutes and did not know what had taken place.

As the landlord had been providing testimony during that time, I repeated the testimony when the tenant resumed participation and gave her opportunity to ask any questions.

Settlement Discussions During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so 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 discussions regarding resolution of the dispute. The parties were unable to reach a Decision and the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to the relief requested? Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant submitted a handwritten single page signed by the landlord which stated that she had a fixed term tenancy ending March 2022. The agent for the landlord who attended at the hearing stated she was unaware that there was such an agreement as the landlord has lost personal documents in a fire; she believed the tenancy was monthly.

The parties agreed the tenancy began on August 15, 2019 and the tenant continues to reside in the unit. The parties agreed as follows:

INFORMATION	DETAILS
Monthly rent payable on 1 st	\$1,100.00
Security deposit	\$550.00
Pet deposit	\$550.00
Date of tenant's Application	August 5, 2021

The parties agreed the landlord conducted an inspection of the unit on July 10, 2021 and submitted an inspection report to the tenant recording noted deficiencies in the care of the unit. A copy of the inspection report was given to the tenant who signed the document to acknowledge receipt. A copy was not submitted.

The landlord testified that on the day of the inspection, she saw there was dog feces in a dozen or more areas in the tenant's child's bedroom and on child's clothing; there was feces on baseboards throughout the unit, dog urine on the floor, and a "yard full of garbage and dog waste".

The parties agreed that the landlord scheduled a second inspection on July 27, 2021 to give the tenant time to clean the unit.

On July 27, 2021, the landlord was dissatisfied with the condition of the unit. The landlord testified that the tenant had improved the condition of the unit, but it was still unsanitary, filthy, and unsightly. For example, the appliances were dirty and may "not be salvageable". The landlord observed that the carpet in the child's bedroom was still stained with feces and feces was on the baseboards. The landlord testified there were empty pizza boxes stacked in the back yard and the neighbours had reported the garbage was attracting bears. The landlord testified that the back yard still had large amounts of dog feces.

The tenant acknowledged that her dog had nine puppies for which she had found homes. She acknowledged the unit needed considerable cleaning from the dogs (ten in total). However, she said she brought the unit into good and acceptable cleanliness by the time of the second inspection; she had hired a cleaner and had paid cash. The tenant submitted photographs of the unit showing the unit was clean; the date the photographs were taken was not clarified. She acknowledged the empty pizza boxes in the backyard but denied that they were attracting wild animals. The tenant stated that the time between the two inspections was not long enough to fully clean the backyard.

After the inspection of July 27, 2021, the landlord issued a One Month Notice. The parties acknowledged the following:

INFORMATION	DETAILS
Type of Notice	One Month Notice

Date of Notice	July 27, 2021
Effective Date of Notice	August 31, 2021
Date and Method of Service	Personal on July 27, 2021
Effective Date of Service	July 27, 2021
Grounds	Tenant has put the landlord's property at significant risk, tenant has caused extraordinary damage, tenant has not done required repairs.

The reasons for the issuance of the One Month Notice are that the tenant "has been breeding dogs on the property allowing them to defecate on the floors throughout the house.". The One Month Notice also referenced garbage in the yard attracting bears. The landlord testified that the cumulative effect of the feces, urine, and garbage to amount to extraordinary damage, thereby putting the landlord's property at significant risk; as well, the tenant has not done required repairs.

The tenant requested the One Month Notice be cancelled and she be granted an award of \$100.00 as reimbursement of the filing fee.

The landlord requested an Order of Possession.

Analysis

Section 47 of the *Act* provides that upon receipt of a One Month Notice, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the One Month Notice.

Based on the totality of the evidence including the testimony of the parties and the documentary evidence, I am satisfied that the landlord has met their evidentiary onus and demonstrated a valid basis for the One Month Notice

Where the parties provide conflicting testimonies, I find the landlord to be a more credible witness. They provided cogent, reasonable testimony. I find the tenant's testimony to generally have little air of reality and not in line with what would reasonably be expected under the circumstances.

The description of the unit during both inspections by the landlord, which I accept, establish on a balance of probabilities that the unit had dog feces/urine staining floors and baseboards inside; it was also present in unacceptable amounts in the year. As well, there was garbage, acknowledged by the tenant, which I find could reasonably attract bears and I accept the landlord's testimony of complaints by neighbours.

I find the tenant caused extraordinary damage, that is, the damage was damaging to the unit in ways that may require considerable cleaning or repairs. I find the backyard garbage put the property at risk of presence of bears. I find the tenant failed to do the cleaning/repairs required by the landlord in the first inspection of July 10, 2021.

I am satisfied on a balance of probabilities that the landlord has established that the tenant has put the landlord's property at significant risk, caused extraordinary damage, and failed to do repairs and cleaning outlined in the July 10, 2021 inspection.

Accordingly, I dismiss the tenant's application seeking cancellation of the notice.

I find that the One Month Notice meets the form and content requirement of section 52 of the Act as it is in the prescribed form, is signed and dated by the landlord, identifies the parties and the dispute address, and provides the reasons for the tenancy to end.

Therefore, I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

Conclusion

I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

The tenant's claim is dismissed without leave to reapply.

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: September 17, 2021

Residential Tenancy Branch