



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN SIMILKAMEEN BRAIN INJURY
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a One Month Notice to End Tenancy for Cause dated April 28, 2021 (1 Month Notice) and to recover the cost of the filing fee.

The tenant, an agent for the landlord, LS (agent), a tenant advocate, KS (advocate), and an assistant to the agent, MK (assistant) attended the teleconference hearing and were affirmed. The parties confirmed that they had exchanged their documentary evidence, had the opportunity to review that evidence and were given the opportunity to ask questions. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they were served with documentary evidence and that they had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act and the Rules.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Also, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Although the tenant requested more time to make an application to cancel the 1 Month Notice, as the 1 Month Notice is dated April 28, 2021 and the tenant filed their application on May 5, 2021, I find the tenant applied within the 10-day time period provided under the Act and therefore do not need to consider that portion of the tenant's application further.

Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. If yes, is the tenant entitled to the filing fee under the Act?
3. If no, is the landlord entitled to an Order of Possession?

Background and Evidence

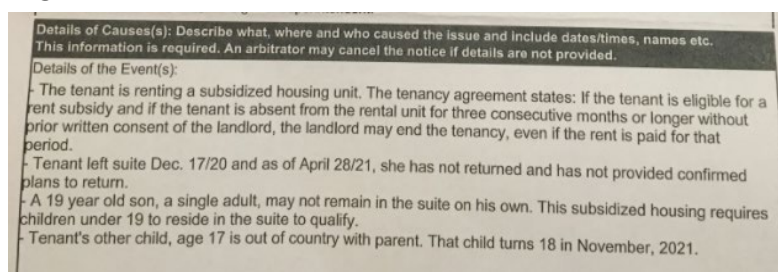
A copy of the tenancy agreement was submitted in evidence. The tenancy began on August 1, 2014. The tenant resides in subsidized housing.

A copy of the 1 Month Notice was submitted in evidence. The tenant confirmed being served with the 1 Month Notice on April 28, 2021, which is the same date the 1 Month Notice was dated. The tenant disputed the 1 Month Notice on May 5, 2021. The effective vacancy date is listed as May 31, 2021.

The 1 cause listed on the 1 Month Notice is:

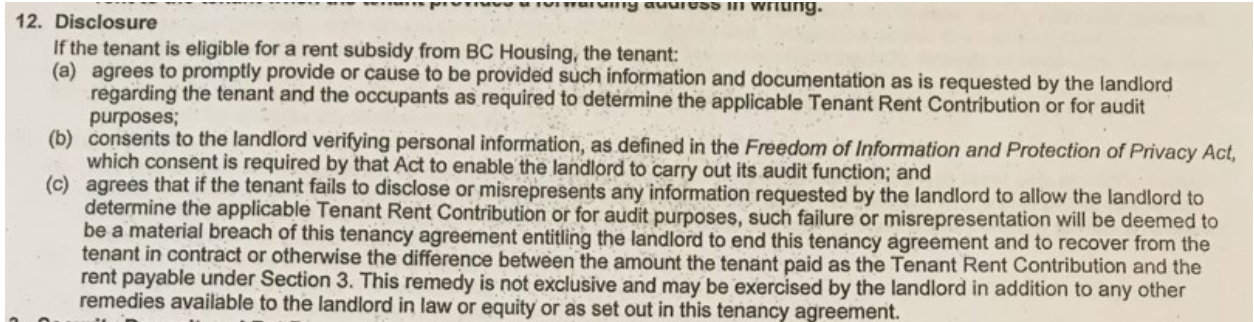
1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The "Details of Cause" section listed on the 1 Month Notice states as follows:



[Reproduced as written]

Regarding the cause listed which is breach of a material term of the tenancy agreement, that was not corrected within a reasonable time after written notice to do so, the landlord presented the signed tenancy agreement, which was dated and signed by both parties on June 27, 2014. Clause 12 of the tenancy agreement reads as follows:



[Reproduced as written]

The agent presented a past due reminder dated April 8, 2021 stating a deadline of April 14, 2021 whereby the tenant was reminded in part as follows:

- As you are aware, **all** tenants receiving a rent subsidy, must completed an Annual Rent Review of Income and Assets, so you can continue to receive subsidy for your rent. **Any rent changes will take effect on May 1, 2021.**
- We have attached a list to indicate what documents we require...
- The deadline to supply documents to us is April 14, 2021...
- Regulations for the rent subsidies state that reviews not completed in time **will result in the end of your tenancy. It is a material term of tenancy to declare all household income for all adults.**

[Reproduced as written]

As the agent stated they did not hear back from the tenant before April 14, 2021, the landlord sent a reminder email dated April 20, 2021, to which the tenant replied as follows:

Hello...

I'm still in Mexico and I will be back on May 1st; when I get home I will get you all the paperwork and I will pay the full rent until the review. Will it be ok if I give you a check or should I sent it to you in cash? How much do I owe you?

Thanks for your understanding and cooperation.

[Reproduced as written]

The agent stated that it wasn't until August 31, 2021 before the tenant supplied all of the required documents and given that the tenant does not have her daughter living with her currently, no longer qualifies for subsidized housing.

The tenant confirmed that they signed an agreement to have their daughter in the temporary care of the Ministry for Children and Family Development. The agent stated that it will be 11 months now since the tenant's daughter resided with her mother.

The parties agreed that money was paid for September 2021, to which the agent stated a receipt for use and occupancy was provided to the tenant. The agent is seeking an order of possession for October 31, 2021 at 1:00 p.m.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a landlord issues a notice under Section 47 of the Act, they bear the responsibility in providing sufficient evidence to support the issuance of that notice. I have considered the testimony and documentary evidence, and I am satisfied that the landlord has provided sufficient evidence to support that the tenant was warned in writing on April 8, 2021 that all documents must be provided by April 14, 2021 or face eviction. I also find that the tenant admitted that her daughter does not currently reside with her and that the tenant did not deny that all required documents were not provided until August 31, 2021.

Therefore, I find the tenant breached clause 12 of the signed tenancy agreement and that clause 12 was a material term of the tenancy agreement. I also find that the landlord gave the tenant reasonable time and that even as of the date of the hearing, September 13, 2021, the tenant's daughter does not reside in the rental unit with her mother. Given the above, I dismiss the tenant's application in full as I find the 1 Month Notice is valid.

I find the tenancy ended on the effective date, which was May 31, 2021. Pursuant to section 55 of the Act, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act and therefore, I must grant the landlord an order of possession. As requested by the agent, I grant the order of possession effective **October 31, 2021 at 1:00 p.m.**

As the tenant's application fails, I do not grant the filing fee.

I caution the tenant not to breach a material term of any tenancy agreement in the future.

Conclusion

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

The 1 Month Notice is valid and is upheld. The tenancy ended on May 31, 2021. The landlord is granted an order of possession effective October 31, 2021 at 1:00 p.m., which must be served on the tenant. Should the landlord require enforcement of the order of possession, the landlord may apply in the Supreme Court.

The tenant should be aware that if the tenant does not comply with the order of possession, the tenant may be responsible for all enforcement costs.

This decision will be emailed to both parties.

The order of possession will be sent by email 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: September 13, 2021

Residential Tenancy Branch