



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OKANAGAN METIS & ABORIGINAL HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT, CNR, LRE, OLC

Introduction

This hearing dealt with the tenants two applications pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

and

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both Parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence for the application to cancel the 1 month notice in person. Both parties also confirmed the landlord served the tenants

with their documentary evidence by placing it in their mailbox on August 24, 2021. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

The tenants stated that they served the landlord with the second application for dispute of a 10 Day Notice; a request to suspend or set conditions on the landlord's right to enter; a request for an order for the landlord to comply and recovery of the filing fee was served to the landlord by placing it in the landlord's mailbox. The landlord disputed that no package was served concerning those issues. The tenants were unable to provide any supporting evidence of service. I find on a balance of probabilities that the tenants failed to properly serve the landlord with this notice of hearing package and as such dismiss this application with leave to reapply for lack of service. Leave to reapply is not an extension of any applicable limitation period.

Discussions at the outset clarified that the tenant, B.N.'s legal name is M.B.N. Not B.N. nor M.N. As such, both parties consented to the tenants' application being amended to reflect the tenants proper name.

The hearing proceeded only on the tenants' application to cancel the 1 month notice and recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?

Are the tenants entitled to recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that on July 9, 2021, the landlord served the tenant with the 1 Month Notice dated July 9, 2021 by placing it in the tenants' mailbox. The 1 Month Notice sets out an effective end of tenancy date of August 31, 2021 and that it was being given as:

- 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 state:

Tenant has two cats in unit and after serving with three breach letters, the situation has not been corrected. Tenants are allowed to keep only one indoor spade/neutered cat. Tenant signed paperwork indicating they owned only one cat.
[reproduced as written]

Both parties provided affirmed testimony that the tenants have 2 cats. Both parties confirmed the signed tenancy agreement allows for only 1 cat. Both parties confirmed the landlord served 3 breach letters to the tenants concerning the tenants having 2 cats.

The tenants confirmed that they still have two cats as of the date of this hearing but argued that verbal permission to have a second cat was given by the landlord's agent, R.N. The landlord disputed the tenants' claims arguing that R.N. knows that she is not authorized to consent to tenants having more pets than allowed. The landlord called R.N. as a witness.

R.N. stated under oath that only 1 cat is allowed as part of the tenancy agreement and that at no time was permission given for an extra cat. The witness was asked by the tenants if they had asked for permission to have 2 cats. The witness stated that she did not recall, but did warn the tenants that only 1 cat was allowed.

Analysis

Section 47(1)(h) of the Act sets out that a landlord may end a tenancy where the tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed affirmed evidence of both parties that the landlord served the tenants with the 1 month notice to end tenancy dated July 9, 2021 by placing it in the tenants' mailbox.

I accept the undisputed affirmed evidence of both parties that the tenants have 2 cats and that there is a condition on their signed tenancy agreement which allows for only 1 cat. Both parties provided affirmed testimony that the landlord served 3 breach letters to the tenants of having additional an cat as an issue.

Despite the tenants argument that they were given verbal permission to have an additional cat by R.N. the landlord called R.N. as a witness who stated that at no time was permission given to have an additional cat, but in fact was warned that only 1 cat was allowed as per the tenancy agreement.

I find on this basis that the landlord has provided sufficient evidence to satisfy me that the reasons for cause are justified on the 1 month notice dated July 9, 2021. The tenants' application to cancel the 1 month notice is dismissed.

Pursuant to section 55 of the Act, the landlord's notice having been upheld is granted an order of possession to be effective 2 days after it is served upon the tenants.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: November 23, 2021

Residential Tenancy Branch