



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- to recover the cost of the filing fee.

The tenant and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed prior to the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two matters of dispute on the application, the most urgent of which is the application to cancel the One Month Notice. I find not all issues are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the One Month Notice. The balance of the tenant's application is **dismissed, with leave to re-apply**.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support the Notice issued to the tenant?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

This tenancy began on December 1, 2014 and current monthly rent is \$990. Filed in evidence was a copy of the written tenancy agreement.

The Notice to End Tenancy for Cause which is the subject of this application, was dated September 20, 2021, for an effective move out date of October 31, 2021. The agent submitted that they served the Notice to the tenant on September 20, 2021, and the tenant confirmed that she received the Notice on that date, by personal service.

It is noted that the tenant's application in dispute of the Notices was filed on September 22, 2021, within the deadline required by the Act to dispute the Notice.

Pursuant to Rule 7.18, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord marked the boxes on the Notice, which alleged that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Additionally, the landlord marked two other boxes on the Notice, which alleged that the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

In the Details of Causes portion of the Notice, the landlord was instructed to "Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered)." In this box, the landlord wrote nothing.

The landlord attached a separate sheet, which stated:

X Didn't allow me to enter to inspect the apartment, despite the issued notice.

X The tenant has a dog, despite a "no pets" policy of the building, no pet application, no pet deposit payment confirmation in the file.

In response to my inquiry, the agent could not provide any evidence as to what the illegal activities might be. The agent appeared unsure about my question.

Asked to explain the disturbances which caused the Notice to be issued, the agent said she heard a dog barking inside the rental unit.

In response to my inquiry, the agent said she was the building manager and began working at the residential property, a multi-unit apartment building, in April 2021. The agent said she did not know if there were other pets living in the building.

The landlord filed documentary and digital evidence.

Tenant's response –

The tenant submitted that she had permission from the previous building manager to have a dog in the rental unit. The tenant said that a "myriad" of other pets lived in the residential property.

The tenant filed in evidence emails between the tenant and the previous building manager, relating to the tenant's dog, from January 2021.

The tenant denied disturbing other occupants of the residential property or the landlord and that she has done nothing illegal.

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 tenant disputes a Notice to end a tenancy on time, which the tenant did in this matter, the onus of proof is on the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

I must consider whether on the day the Notice was issued, the landlord had sufficient cause to end the tenancy.

I have reviewed the Notice and I find the landlord did not provide any Details of Causes and I therefore find the Notice insufficient for the tenant to properly rebut the Notice.

The landlord is instructed on the Details of Causes to describe what, where, and who caused the issue and included dates/times, names, etc. The landlord, on the Notice form, is informed that this evidence is required or the Notice may be cancelled.

In this case, the agent could not provide any instances of alleged illegal activity. I find it more likely than not that the landlord misread the Notice. I therefore find the landlord submitted insufficient evidence to support these two causes listed on the Notice.

As to the landlord's two other allegations listed on the Notice, the landlord failed to provide any details of the causes, apart from the statement that the tenant has a dog, despite the "no pets" policy of the building, no pet application, and no pet deposit payment on file. I will address this issue within this Decision. However, the landlord failed to provide the other details specifying exactly to what the landlord is referring. As a result, I find the landlord has not laid a foundation in this Notice who, what, where, and when the tenant was significantly interfering with or unreasonably disturbing another occupant or the landlord or seriously jeopardizing the health or safety or lawful right of another occupant or the landlord.

For these reasons, I find the Notice does not comply with section 52(d) and (e) of the Act and is invalid as it does not state the “Details of Cause(s)” portion which would set out the specific allegations of the causes listed by the landlord on the Notice. Therefore, I find the Notice is not valid as it is missing necessary and required information. The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved forms contain all of the required information a tenant would need to dispute the Notice, if necessary.

As a result, I ORDER that the One Month Notice is cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

As I have cancelled the Notice, I grant the tenant recovery of the filing fee of \$100. The tenant is authorized to deduct \$100 from a future monthly rent payment in satisfaction of her monetary award. The tenant should inform the landlord when this deduction is made, so that the landlord does not issue the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

Order under section 62(3) of the Act –

As to the landlord’s assertion on the Notice that the tenant has a dog, despite the “no pets” policy of the building, no pet application, and no pet deposit payment on file, I find that this statement in and of itself is insufficient to prove significant interference with or unreasonable disturbance to another occupant or the landlord or a serious jeopardization of the health or safety or lawful right of another occupant or the landlord.

It was not clear even if this was one of the reasons the Notice was issued, when I reviewed the other evidence submitted by the landlord. The agent stated only that she heard the dog barking.

Upon review of the evidence filed, the tenant has submitted that she should be allowed to keep her dog in the rental unit.

I find the tenant submitted sufficient evidence to show that she had permission to acquire a dog while living in the rental unit. I find the email evidence filed by the tenant substantiates that the previous building manager specifically granted permission to the tenant, which I find complies with the requirement of the written tenancy agreement. I also find the tenant submitted compelling evidence that other residents in the residential

property also have pets. The agent, who was the building manager, simply said she did not know if other residents had pets, which I find not convincing.

I find the tenant had the right to rely on the emails from the previous building manager to support that she had written permission to acquire a dog.

Therefore, pursuant to section 62(2), I order that the tenant is allowed to keep her dog living with her in the rental unit for the duration of this tenancy and I order the landlord to not make any further attempts to enforce this term of the tenancy agreement, as to the tenant's present dog.

I also order the landlord to comply with section 62(c)(ii) of the Act and not require a pet damage deposit from the tenant, as I find the landlord's agent agreed the tenant may keep her dog on the residential property in January 2021.

Conclusion

The tenant's application seeking cancellation of the Notice is successful.

The Notice of September 20, 2021, is ordered cancelled due to the landlord's insufficient evidence.

The tenant is granted recovery of the filing fee of \$100.

The balance of the tenant's application not dealing with her request to cancel the Notice is dismissed, with leave to re-apply.

The landlord has been issued orders pursuant to authority granted under section 62 of the Act.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 4, 2022