



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, FFT**

OPC, FFL

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the "Act").

The tenant applied for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the hearing. As both parties were present, service of documents was confirmed. Each party confirmed receipt of one another's Notice of Dispute Resolution Proceedings packages and stated they had no concerns with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act. Both parties confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Can either party recover their filing fee?

Background and Evidence

The landlord gave the following testimony. The rental unit is a small house, approximately 1000 square feet, with 2 bedrooms and 2 baths. The landlord purchased the house as an investment with the intention of moving into it with her family once her family got older. The landlord testified that she is highly allergic to cats and that she wanted the rental property to remain pet free because of this.

The landlord advertised the rental unit for rent on Facebook, indicating on the ad that rent is \$1,400.00 per month plus utilities, no pets, no smoking and no parties. The tenant responded to the ad, stating that she and her grown granddaughter are looking for long term accommodation. The tenant's response was followed up by the landlord asking the tenant if she had pets, what her granddaughter did and if she could do yard maintenance. The landlord testified that the parties spoke on the phone afterwards and the tenant assured her that she didn't have any pets. The landlord provided the facebook communications in her evidence package.

The parties entered into a tenancy and the tenancy agreement was provided as evidence. The tenancy agreement indicates on part 4 of the tenancy agreement that a pet damage deposit is not applicable. The landlord testified that advised the tenant more than once that the tenant could not have pets and that is the reason why the pet damage deposit is clearly marked as not applicable. In early October 2021, the landlord was doing work on the rental property and noticed cats in the tenant's window. The landlord provided photographs of the tenant's cats in the window. The landlord spoke to the tenant on the phone, the tenant admitted to having pets and told the landlord that she will not get rid of the animals.

On October 04, 2021, the landlord served the tenant with a "rental agreement violation" indicating the tenant is in violation of the tenancy agreement by keeping pets in the home. The landlord provides 10 days for the tenant to remove all pets from the house before beginning the eviction process.

On November 13, 2021, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The reason for ending the tenancy is for a breach of a material term of the tenancy that was not corrected within a reasonable time after written notice to do so. A second reason for ending the tenancy was listed, for an alleged breach of an assignment or sublet term, however the landlord acknowledges this did not occur.

The landlord served the tenant with a second 1 Month Notice to End Tenancy for Cause on December 05, 2021. The reasons listed on this notice are because the tenant is

repeatedly late paying rent, and the tenant has allowed an unreasonable number of occupants in the rental unit.

Although the tenant is a party to the tenancy agreement; the granddaughter is not listed as a tenant. Rent was set at \$1,400.00 per month, payable on the first day of each month, and on the tenancy agreement, there is no indication that the tenant's rent would be subsidized. The landlord testified that when showing the unit, she told the tenant rent was \$1,400.00, the tenant told the landlord that it would be no problem. The landlord testified that some time after entering into the tenancy agreement, the tenant advised her that \$400.00 of the rent would be paid by a society and that the tenant would pay the remaining \$1,000.00 each month. There was no communication on this issue before the parties signed the tenancy agreement however it doesn't appear the landlord anticipated any problems with this.

The landlord testified that she received \$1,000.00 rent from the tenant on October 01, 2021, however the society's cheque for the remaining rent came in on October 6th. On November 01, the landlord got the tenant's \$1,000.00, but the cheque from the society for \$400.00 came in on November 3rd. In December, the tenant paid \$1,000.00 before the first of the month, however the remaining \$400.00 came in on December 6th. The landlord testified that she deposited the society's cheques immediately via mobile banking the moment it arrives. As evidence, the landlord provided her bank statements showing when the cheques were deposited into her bank account.

Lastly, the landlord testified the tenant's son appears to be living on the property, based on what her friends and family have told her. The landlord did not call any witnesses to provide testimony regarding this reason for ending the tenancy.

The tenant gave the following testimony. She does not recall responding to the landlord's facebook ad; she remembers being sent the questions about pets and her granddaughter's employment which the tenant found to be too personal to respond to via facebook. She didn't answer the question about the pets because this was a stranger asking out of the blue. She wanted a face-to-face meeting with the landlord and agreed to meet at the landlord's rental unit.

When asked whether the landlord asked the tenant about having pets, the tenant responded she doesn't remember that. She remembers that the landlord brought her son along, they "gabbed" and it was very informal. She was happy to take possession of the rental unit, having lived in a motel for months prior to finding it.

She acknowledges she has 4 cats and 1 dog, all rescues and all spayed/neutered and well behaved. The cats don't spray, and the dog doesn't bark. The animals are never left unattended as either she or the granddaughter are there all the time. She does not recall the conversation she had with the landlord after receiving the warning letter on October 4th but acknowledges that she will not get rid of her animals. Lastly, the tenant testified that her granddaughter is a person with a disability who needs to have the animals to give her comfort as they are her best friends.

Regarding late payments, the tenant's granddaughter was accepted into a program where the society pays part of the granddaughter's rent directly to the landlord to prevent homelessness of persons with disabilities. The tenant testified that the landlord knew about this and had no problems with it. The tenant has always paid her "portion" of the rent, and the tenant has no control over the bookkeeping at the society who may be late in paying their portion.

Lastly, the tenant's son lives in a different city, many hours away and sometimes comes to visit and stay with her and the granddaughter. He does not occupy the unit, only stays as a guest occasionally.

Analysis

The tenant filed her application to dispute the landlord's 1 Month Notice to End Tenancy for Cause on October 20, 2021, within the 10-day timeframe after being served with it on October 13th in accordance with section 47 of the *Act*. The second 1 Month Notice to End Tenancy for Cause served on December 05, 2021 is deemed disputed as well.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Section 26(1) of the *Act* clearly sets out the rules about payment and non-payment of rent. A tenant must pay rent **when it is due under the tenancy agreement**, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. Section 47(1)(b) of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline PG-38 indicates **three late payments** are the minimum number of times sufficient to justify a notice under section 47.

The tenancy agreement clearly states that rent in the amount of \$1,400.00 is due on the first day of each month. While I accept that the tenant paid \$1,000.00 of the total rent of \$1,400.00 on time for each of the months of October, November and December 2021, the fact remains that the remaining \$400.00 of it came in late. I acknowledge that the tenant has no control over when the granddaughter's aid society sends out the cheques, however I am satisfied the reason for ending the tenancy for 3 late payments of rent, contrary to section 47(1)(b) has been made out. To be clear, the requirement for *payment of rent when it is due under the tenancy agreement* does not mean rent is not due when a third-party payor can get the remaining partial payment to the landlord. It is due on the first day of the month, as agreed to by the parties on the tenancy agreement.

Further, while section 26 may contemplate that a tenant may potentially not have to pay rent when it is due under the tenancy agreement "unless the tenant has a right under the Residential Tenancy Act to deduct all or portion of the rent" – the payment of rent from a third-party payor does not constitute a right under the Act to deduct a portion of the rent. The only right to deduct under the Act would be for overpayments of deposits under section 19, for emergency repairs under section 33, for illegal rent increases under section 43 or by a director's order under section 65.

Based on the above, I uphold the landlord's notice to end tenancy issued on December 05, 2021, for late payment of rent.

Section 55 states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the landlord's notice to end tenancy issued on December 05, 2021 and am satisfied it meets the form and content requirements under section 52. The landlord acknowledged during the hearing that the tenant has paid rent for the month of March 2021 and that if she were to be successful in being granted an Order of Possession that she would agree to March 31, 2022 as an effective date. I grant the landlord an Order of Possession effective at 1:00 p.m. on March 31, 2022, pursuant to sections 47 and 55 of the Act.

I note that much of the testimony and evidence in this case centered around the breach of the pet clause or the breach of the number of occupants. As this tenancy is ending pursuant to section 47(1)(b) for late payment of rent, there is no requirement for me to analyze the merits of the application under sections 47(1)(h) breach of the material term of the tenancy not corrected within a reasonable time after written notice to do so or 47(1)(c) unreasonable number of occupants in the rental unit.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on March 31, 2022**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: March 01, 2022

Residential Tenancy Branch