



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OLC FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated January 14, 2022 (1 Month Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee.

The tenant, the father of the tenant, JS (father), an agent for the corporate landlord, JB (agent) and an assistant for the landlord, LK (assistant) attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The parties had the dispute resolution process explained to them and were provided with the opportunity to submit documentary evidence prior to this hearing. I have summarized all of the evidence relevant to the matter before me below. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Later in the hearing, a landlord witness, AG (witness) was called and was affirmed. The witness provided testimony and both parties were given the opportunity to ask the witness questions.

Regarding service, the agent confirmed that they were served with the tenant's application and documentary evidence and had the opportunity to review that evidence prior to the hearing. The agent also confirmed that they did not serve any documentary evidence on the tenant in response to the application.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

- Have the tenants provided sufficient evidence to support an order against the landlord to comply with the Act, regulation or tenancy agreement?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee?
- If not, is the landlord entitled to an order of possession under the Act?

Background and Evidence

Neither party submitted the entire copy of the tenancy agreement. Neither party submitted a copy of the addendum to the tenancy agreement. The tenant provided page 2 of 6 of the tenancy agreement, RTB Form#1 from 2018. The parties agreed that the tenancy began on February 1, 2019.

The tenant confirmed that they were served on January 25, 2022 with a 1 Month Notice to End Tenancy for Cause dated January 14, 2022 via registered mail alleging one cause as follows:

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

The tenants filed their application to dispute the 1 Month Notice on January 26, 2022. The effective vacancy date listed on the 1 Month Notice was February 28, 2022. The parties agreed that the tenants have paid for use and occupancy for April 2022.

As only the first page of the 1 Month Notice was submitted in evidence, the parties agreed that the 1 Month Notice states in part as follows in the “Details of Cause” section of the 1 Month Notice:

Previous inspection dated in October 2021 – home is not being maintained to the level of cleanliness and standard that is expected. The tenancy agreement states the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Pets were also not approved and are a breach of the tenancy agreement.

As neither party provided a copy of the Addendum to the tenancy agreement (Addendum) the agent provided the following details from the Addendum. The agent stated that on page 6 of the tenancy agreement, there is a 4-page Addendum mentioned with a total of 28 terms. The agent stated that term 13 on page 2 of the Addendum states:

The tenants are not allowed any pets of any kind to reside on the premises without written consent of the owner. This also means that pet sitting is not permitted. (If approved, there are N/A).

The father confirmed that the tenant has a dog and that it is a Boxer breed. The father originally testified that the dog was brought into the rental unit 3 years ago and then changed their testimony to two years ago and agreed that the Boxer was brought to the rental unit in February 2020. The father confirmed that the tenant did not have written consent to have the dog in the rental unit.

The agent stated that the landlord wrote a letter dated October 14, 2021 (Warning Letter) to the tenant that included the following wording in paragraph three:

It has also been observed that there are pets that reside at the rental that have not been approved...

We are giving you 10 days to correct the breaches of tenancy. Another inspection will occur if nothing has been addressed, we will be forced to issue you a 30-day notice.

The father testified that there was an inspection planned for 10 days after the Warning Letter and that the landlord did not show up. The agent stated that they attended but were refused access to the rental unit due to COVID. The agent stated that a witness, AG was with them on October 21, 2021 at 2:00 p.m. and that they both saw a dog on the balcony of the rental so even though they were denied entry, the agent knew the tenant still had a dog. The tenant testified that the first time the landlord attended the rental unit for an inspection after the Warning Letter was in late January 2022. The tenant denied that an inspection occurred in October 2021 and also denied that they refused access to the rental unit in October 2021.

As the parties disagreed with each other regarding an inspection in October 2021, the witness was called as a witness and was affirmed. The parties were both instructed not to berate the witness or to ask leading questions. The witness testified as follows with Q representing Question and A representing Answer.

Arbitrator:

Q1: Were you ever in attendance for an inspection at the [rental unit address]?

A1: Yes, a couple of times. The first a couple of years ago and the second time in October, October of 2021. I was with [name of agent] to do an inspection and was denied entry, as far as I remember.

Q2: Did you notice anything in October 2021 when you attended the property?

A2: Outside was a driveway on the left-hand side and a balcony up top and the house was an older house. There were French doors.

Q3: You mentioned a balcony, in your own words can you describe anything you may have seen on the balcony?

Q3: a dog and that's it. I don't recall what breed the dog was but it was a larger dog.

Agent

Q1: Were we denied entry (in October 2021)?

A1: Yes, I can't recall if we were denied before we showed up but at the door we were denied entry.

Q2: What noises were there?

A2: Barking and seeing the dog up top on the balcony.

Cross-examination by father and tenant

Q1: Were you there for the basement suite?

A1: I was there as a witness for (the agent) and not for a specific unit. I can't recall if there was a specific unit we were there for.

Q1: Was there a discussion about rent?

A: Not that I recall.

Witness excused.

Both parties were permitted to provide any final comments they wanted to provide. The father testified that the agent and owner wanted a rent increase to \$2,000.00 and that the agent stated that he might be able to convince the owner to agree to \$1,750.00 per month in rent. The father stated that when the tenant did not agree to \$1,750.00 in rent, the landlord then issued the 1 Month Notice.

The agent testified that they are seeking an order of possession and that the 1 Month Notice is completed unrelated to rent. The agent stated that they believe that the father is residing at the rental unit because they are always there but can't prove it so stated that when the basement suite was available, that the tenant and their father could rent the upper and lower for an increase in rent. The father responded by stating that the agent was not telling the truth and that the father has their own residence and that the rent was not related to taking over the basement portion of the home.

The tenant confirmed that the dog remains in the rental unit.

Analysis

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

1 Month Notice to End Tenancy for Cause – When a landlord issues a 1 Month Notice, the onus of proof reverts to the landlord to prove any of the causes listed on the 1 Month Notice if the tenant applies to dispute the 1 Month Notice within the time period provided under section 47 of the Act. I find the tenant did file their application within the 10-day timeline and as a result, I find the landlord has the burden of proof in this matter.

I find the tenancy agreement includes a clause that does not permit pets in the rental unit and that written consent is required from the landlord. There is no dispute that the tenant does not have written consent from the landlord to have a dog in the rental unit.

The father and tenant did not deny receiving the Warning Letter from the landlord and also did not dispute the contents of the Warning Letter described by the agent during the hearing. The parties did dispute when the next inspection was refused by the tenant. The agent stated that it was on October 21, 2021 at 2:00 p.m. and the tenant claims it was late January 2022. I prefer the evidence of the agent and witness over that of the tenant and their father as I find the tenant was vague as they could not recall a specific date in January 2022 when they refused access to the landlord and the father originally stated the dog was brought into the rental unit 3 years prior to the hearing and later changed their testimony to 2 years prior to the hearing. I have also considered that the witness testimony was consistent with the testimony of the agent. Therefore, I afford more weight to the agent's testimony versus the testimony of the tenant and their father given the above.

Based on the evidence before me, I find the pet clause is a material term of the tenancy as I find the wording is clear that given that there is no pet sitting permitted either, that

the landlord had no intention to rent to someone that had pets and would not have rented to the tenant if they had pets. In addition, as tenant confirmed that after receiving the Warning Letter the tenant has not removed the dog from the rental unit and that the dog remains at the rental unit as of the date of the hearing, April 26, 2022. Given the above, **I dismiss** the tenants' application in full, **without leave to reapply**. **I uphold** the landlord's 1 Month Notice dated January 14, 2022 as I find the agent has provided sufficient evidence to support that the cause listed in the 1 Month Notice is valid.

I find the rent increase allegation made by the tenant and their father is not relevant to the 1 Month Notice as the Act does not include a good faith requirement, which section 49 of the Act does (2 Month Notice to End Tenancy for Landlord's Use of Property).

As the tenants' application has been dismissed, I do not grant the filing fee to the tenants.

Section 55(1) of the Act applies and states:

Order of possession for the landlord

55(1) 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**

- (a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

Given the above and considering that I find the 1 Month Notice complies with section 52 of the Act, **I must** grant the landlord an order of possession. As the parties agreed that money has been paid for use and occupancy for April 2022, I grant the landlord an order of possession **effective April 30, 2022 at 1:00 p.m.**

I find the tenancy ended on February 28, 2022, which was the effective vacancy date listed on the 1 Month Notice.

Conclusion

The tenants' application to cancel the 1 Month Notice has been dismissed and the 1 Month Notice issued by the landlord has been upheld.

The tenancy ended on February 28, 2022.

The landlord has been granted an order of possession effective April 30, 2022 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted as stated above.

This decision will be emailed to both parties at the email addresses confirmed by the parties during the hearing. The order of possession will be emailed to the landlord only for service as necessary on the tenants.

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: April 26, 2022

Residential Tenancy Branch