



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, LRE, PSF, LAT, OLC
CNC, LRE, LAT, OLC

Introduction

This hearing dealt with two tenant applications pursuant to the *Residential Tenancy Act* (the *Act*). The first application for dispute resolution filed on January 22, 2022 was for:

- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65; and
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The second application for dispute resolution filed on January 27, 2022 was for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47,
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- authorization to change the locks, pursuant to section 31; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

Both parties were cautioned that pursuant to Rule 7.4 of the Residential Tenancy Branch Rules of Procedure requires the parties to present their evidence and that evidence not presented may not be considered.

The tenant testified that she served the landlord with both applications for dispute resolution and her evidence by leaving them on the landlord's doorstep on February 9, 2022. The landlord confirmed receipt of the above documents on or around that date. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the above documents because receipt was confirmed.

The landlord testified that he served the tenant with his evidence by sticking it in her door. The landlord did not recall on what date the documents were served. The tenant testified that the landlord's evidence was received on March 10, 2022. I find that the tenant was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the landlord's evidence because receipt was confirmed.

Preliminary Issue- Amendment

The tenant's applications for dispute both list "basement" twice in the address of the subject rental property. The tenant testified that the duplication was done in error. Pursuant to section 64 of the *Act*, I amend the tenants' application to only state "basement" once.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and the continuation of this tenancy is not sufficiently related to any of the tenant’s other claims to warrant that they be heard together.

The tenant’s other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all of the tenant’s claims with leave to reapply except cancellation of the One Month Notice.

Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. In this decision, I will only address the facts and evidence which underpin my findings and will only summarize and speak to the points which are essential in order to determine whether or not the tenancy will continue or end.

Throughout the hearing I asked the landlord to present his evidence and reminded him that evidence not presented may not be considered. While the landlord presented some evidence, the majority was not presented. During the hearing, when I asked the landlord to present his evidence, he stated that he didn’t know where supporting evidence was in his package and stated, “give me a break”. I will only refer to the landlord’s evidence that was presented by the landlord.

Both parties agreed to the following facts. This tenancy began on March 20, 2020 and is currently ongoing. A security deposit of \$406.00 and a pet damage deposit of \$400.00 were paid by the tenant to the landlord. A written tenancy agreement and addendum were signed by the tenant, but not the landlord. The landlord entered the above tenancy agreement and addendum into evidence.

Both parties agree that the landlord posted the One Month Notice on the tenant's door on January 27, 2022. The tenant testified that she received it on January 27, 2022. The One Month Notice was entered into evidence and states the reasons for ending the tenancy. The below reasons were selected by the landlord, and the italicized writing is the tenant's handwritten elaboration of those reasons found on the One Month Notice:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- 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.
 - *Illicit use of drugs on property by tenant and friends which stay the night, party, etc.*
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
 - *Use of illegal drugs*
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
 - *Dog feces and holes left in backyard not repaired or picked up. See below additional documentation available.*
- Tenant has not done required repairs of damage to the unit/site.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
 - *Only one pet (dog) permitted on property, now two cats live in suite as well without permission.*

The Details of Cause section of the One Month Notice states:

- An inspection done Jan. 25, 2022 revealed several notes of concern
 1. Toilet full of toilet paper. Told her she cannot flush toilet like that! I physically removed reams of T.P. from toilet and plunged it. Working find now. Also had to tell her again how to properly flush toilet.
 2. Kitchen and bathroom fans not working properly and hanging of bathroom ceiling and kitchen fan hanging down with exposed wires showing. [The

tenant] she had a friend come over to try and fix them and just left then unfixed and now expects me to fix them and cover the cost. She makes no effort to maintain property.

3. [The tenant] makes no effort to clean up the dog feces in my back yard by her dog. Dog also digs holes in backyard which she to date has not repairs after almost 3 years of living here

The landlord testified that he served the tenant with the One Month Notice because the tenant:

- is an alcoholic drug user,
- has different men coming over,
- is a bisexual,
- has sex parties,
- isn't a good mother,
- has more pets than she is permitted, and
- does "stuff" without asking for permission.

I cautioned the landlord that the tenant's sexual orientation and sexuality have no place in this hearing. I asked the landlord to present his evidence pertaining to the grounds to end tenancy stated on the One Month Notice. The landlord then read out each ground to end tenancy stated on the notice and testified as follows:

Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park, and Tenant has not done required repairs of damage to the unit/site.

The landlord testified that the tenant's dog digs holes in the yard and the tenant does not pick up her dog's feces. The landlord testified that he uploaded photographs of same but was unable to identify where is his 87 pages of evidence those photographs were located. The landlord did not speak to any individual photograph and did not provide testimony as to when the photographs were taken. Upon review of the landlord's evidence I located several undated photographs of the backyard which show:

- The backyard covered in snow.
- The backyard without snow, several brown patches can be seen.
- A close-up photograph of a patch of dog poo in snow.

The landlord testified that he asked the tenant to fix the holes caused by her dog but she failed to do so. The landlord did not present any written request for repairs.

The tenant testified that she picks up after her dog. The tenant testified that her dog did dig some holes in the yard; however, she repaired and filled these holes before “the snow hit”, which was before the One Month Notice was served. The tenant testified that the back yard is clean.

The landlord testified that he inspected the subject rental property on January 25, 2022 and found the toilet full of toilet paper which he had to remove to prevent a clog. The tenant testified that the toilet does not flush properly and that this is an ongoing issue the landlord is aware of.

The landlord testified that the tenant’s friend came over and tried to fix the kitchen and bathroom fans but was unable to do so and left them dangling from the ceiling with wires exposed. The landlord did not present any documentary evidence to support the above testimony and did not present any evidence to establish the move in condition of the fans.

The tenant testified that the kitchen and bathroom fans were not working so the landlord hired an electrician to come and fix them, but the electrician did not finish the work.

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 Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant has alcohol and drug users coming over all the time. The landlord testified that the tenant does illegal drugs. The landlord testified that he knows the tenant does illegal drugs because his friend, the tenant’s ex roommate told him so. The landlord did not present any documentary evidence to support the above testimony.

The tenant testified that she and her friends do not do illegal drugs and that she is not an alcoholic.

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

The landlord testified that the tenant was only allowed to have one pet and now she has three pets. The tenancy agreement is silent on pets. The tenancy addendum states:

In regards to pets:

- Animal defecation and urination are only allowed within the fenced area at the back of the property.
- All feces must be picked up immediately after defecation or within 2 days of defecation.

The tenancy agreement and addendum do not mention the number of pets allowed. I asked the tenant if he provided the tenant with notice that he considered the number of pets owned by the tenant to be a material breach of the tenancy agreement. The tenant testified that he sent the tenant an email dated January 12, 2021. In the hearing the landlord read the January 12, 2021 email aloud. The January 12, 2021 email was entered into evidence, it does not reference pets whatsoever and does not reference any material breaches.

Analysis

Section 47(1) of the *Act* states:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b)the tenant is repeatedly late paying rent;

(c)there are an unreasonable number of occupants in a rental unit;

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

I note that it is not permissible to end a tenancy based on a person's sexual orientation or sexuality and that an attempt to end a tenancy on such a ground may be a violation of the BC Human Rights Code. The BC Human Rights Code is adjudicated by the BC Human Rights Tribunal.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park, and Tenant has not done required repairs of damage to the unit/site.

The landlord testified that the tenant's dog dug holes in the yard and the tenant has not picked up her dog's feces. The tenant testified that she fixed the holes dug by her dog prior to being served with the One Month Notice. The photographs of the yard entered into evidence by the landlord are not dated and the landlord did not state when the photographs were taken. I find that the landlord has not proved, on a balance of probabilities, that the holes dug by the tenant's dog existed at the time the One Month Notice was served. I find that the landlord has not proved that he requested the tenant, in writing to fix the holes or pick up dog feces because no written letter stating same

was presented by the landlord. I find that the landlord has not proved that holes made in a yard by a dog put the landlord's property at significant risk. The landlord did not provide testimony on why holes dug by a dog constitute significant risk to his property or extraordinary damage. Based on the photographs entered into evidence, I find that the holes, which the landlord has not proved still exist, constitute minor damage and do not pose a significant risk to the property.

The landlord entered into evidence one photograph of a pile of dog feces. The tenant testified that she picked up after her dog. I find that the landlord has not proved where or when the photograph was taken or if it is tenant's dog's feces. The landlord only referenced that a dog feces photo was in his evidence package, but did not provide further testimony regarding the photograph. I find that the landlord has not proved, on a balance of probabilities, that the tenant has not cleaned up her dog's feces in the yard.

I find that a toilet filled with too much toilet paper on one occasion is not grounds for eviction. I find that the landlord has not proved that the clogged toilet put the landlord's property at significant risk or that the clogged toilet caused extraordinary damage as no damage was reported.

The landlord testified that the tenant's friend damaged the kitchen and ceiling fan in an attempt to fix them. The tenant testified that it was the landlord's electrician who left the fans in poor condition. The landlord did not present a move in condition report or other documentation to prove the condition of the fans on move in. I find that the landlord has not proved that the damage to the fans was caused by the tenant, or a person permitted on the property by the tenant.

In accordance with my above findings, I find that the landlord has not proved any of the above listed grounds to end tenancy.

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, Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant has alcohol and drug users coming over all the time. The landlord did not present any documentary evidence that supports the above claim. The tenant testified that she and her friends do not do illegal drugs and that she is not an alcoholic. As noted above, when one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find that the landlord has not proved, on a balance of probabilities, that the tenant or persons permitted on the property by the tenant, do illegal drugs or are alcoholics. I also note that the mere act of doing drugs and drinking alcohol are not grounds to end tenancy.

In accordance with my above findings, I find that the landlord has not proved any of the above listed grounds to end tenancy.

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

Residential Tenancy Policy Guideline #28 states:

The question of whether or not a pets clause is a material term of the tenancy agreement will depend upon what the parties intended to be the consequence of a breach of the clause. The tenancy agreement itself may designate the pets clause to be a "material term". While that is an important indication, it is not always conclusive.

I find that since the landlord uploaded the tenancy agreement and addendum, which was signed by the tenant and likely drafted by the landlord, the parties, including the landlord, intended to be bound by its terms, even though the landlord did not sign it.

Upon review of the tenancy agreement and amendment entered into evidence by the landlord, I find that the tenancy agreement and addendum do not limit the number of pets the tenant is permitted to have on the property. I find that the number of pets permitted on the property is not a material term of the tenancy agreement as it was not contemplated as a material term at the start of this tenancy as evidenced by its absence from the tenancy agreement and addendum. As the number of pets is not a material terms of the tenancy agreement, I dismiss this ground for eviction. I also note that the

landlord did not present evidence of the landlord notifying the tenant in writing, that he believed the number of pets to be a breach of a material term.

Conclusion

I find that since the tenant has not proved any of the grounds for eviction checked on the One Month Notice, the One Month Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the *Act*. The tenant is not required to vacate.

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: April 11, 2022

Residential Tenancy Branch