



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC 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). The tenants applied to cancel a 1 month Notice to End Tenancy for Cause dated February 28, 2022 (1 Month Notice) and to recover the cost of the filing fee.

Tenant BK (tenant) and two agents for the landlord, EW and BB (agents) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

The landlord's documentary evidence was excluded as it was filed late and not within the timelines specified in the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The agents confirmed that they received the tenants' documentary evidence and had the opportunity to review that evidence. As a result, I find the landlords were sufficiently served in accordance with the Act and RTB Rules.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If yes, are the tenants also entitled to the recovery of the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2010 and converted to a month-to-month tenancy after October 31, 2011. Monthly rent is currently \$1,024.00 per month and is due on the first day of each month. The tenants paid a security deposit of \$450.00 at the start of the tenancy.

The tenant confirmed receiving the 1 Month Notice on their door on February 28, 2022, which listed an effective vacancy date of March 31, 2022. The tenants disputed the 1 Month Notice on March 4, 2022, which is within the permitted 10 day timeline under section 47 of the Act. The landlord listed the following 2 causes on the 1 Month Notice:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by tenancy agreement.

The Details of Dispute portion of the 1 Month Notice states as follows:

Details of the Event(s):

TENANT HAS GIVEN A LETTER ON JANUARY 29TH 2022 REQUESTING TO PAY PET DEPOSIT. TENANT HAS GIVEN A MONTH TO PAY. IT WAS STATED ON THE SAME LETTER THAT A 30 DAY NOTICE TO END TENANCY WILL BE ISSUED IF PAYMENT HAS NOT BEEN MADE WITHIN THE GIVEN TIMEFRAME, THUS THIS NOTICE HAS BEEN DELIVERED TO THE TENANT.

Regarding the first cause listed, the agents referred to clause 5 of the Addendum which states as follows:

landlord/agent. any action taken by the landlord/agent without written consent from the

5. Pets:
No pets will be allowed without the prior written permission of the Landlord. Mandatory spraying of the unit for flees is required upon move out.

6. Mandatory Cat Spay/Neuter:

The agents stated that all they are seeking is the payment of the pet damage deposit, which the tenant refuses to pay. The tenant referred to the pet damage deposit term of the tenancy agreement, which states as follows:

B. Pet Damage Deposit ☒ not applicable
The tenant is required to pay a pet damage deposit of \$
by
day month year

The tenant stated that they refused to pay a pet damage deposit due to Mary, the tenant's first manager who the tenant claims advised them, "don't worry about it, I am only worried about dogs". The tenant claims they had their cat, Fluffy, at the time they started the tenancy, which I find would make Fluffy 12 years old at the time of the hearing.

The tenant stated that they feel it is unjust after 10 building managers to suddenly be asked to pay a pet damage deposit. The tenant admitted that there was nothing in writing from any of the previous building managers that indicated they did not have to pay a pet damage deposit, except for what the tenant describes as "not applicable" being checked off from the pet damage deposit noted above.

During the hearing, the agents described a rental unit inspection that they stated occurred on January 18, 2022. The tenant denies that any inspection was conducted on that date or at all in January 2022 and that the agents are not being truthful. The tenant also stated that there was no copy of a 24 hour notice of entry to conduct an inspection. The agents were asked when the first inspection was conducted when they were involved with the building, and they stated "2 years and a bit" and prior to the summer of 2017.

The tenant stated that their position is that it is now 12 years after the tenancy began and that no pet damage deposit has ever been requested until 2022. The tenant did admit to signing the no pet clause #5 as their initials are next to that clause which is included above.

Although the agents stated they offered a payment plan for the tenant to pay the required \$450.00 pet damage deposit, the tenant denied that any such payment plan was offered by the agents. The tenant admitted that even after a breach letter dated January 29, 2022 (Breach Letter) was issued for non-payment of a pet damage deposit, the tenant has refused to pay any pet damage deposit.

Analysis

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

Once the tenants disputed the 1 Month Notice in accordance with the timeline provided for pursuant section 47 of the *Act*, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1

Month Notice is valid, the 1 Month Notice will be cancelled, and will have no force or effect.

Regarding the causes listed above, I find the tenant admitted to not paying the pet damage deposit even after receiving the Breach Letter.

I will now address the pet damage deposit clause listed on the tenancy agreement. I find the tenant's version of events does not have the ring of truth and I am not persuaded by their version as a result. I find it is more likely than not, that the tenant either did not admit to having their cat Fluffy at the start of the tenancy, or that Fluffy was brought into the rental unit after the start of the tenancy. I have reached this finding as I find that "not applicable" would mean there was no pet at all, including a cat and that the most likely notation would have been "cat permitted" or "cat OK" under the pet damage deposit, **which the tenancy agreement does not indicate.**

In addition to the above, as the agents indicated they do not wish the cat to be removed and simply want the pet damage deposit to be paid, I find that "estoppel" applies in this matter. Estoppel is a rule of law that states when person A, by act or words, gives person B reason to believe that a certain set of facts upon which person B takes action, person A cannot later, to his (or her) benefit, deny those facts or say that his (or her) earlier act was improper. In effect, estoppel is a form of waiver, when person A does not enforce their rights and person B relies on this waiver. Therefore, I find either by lack of regular rental unit inspections or by way of acceptance of the cat in the rental unit for a period of 12 years, I find the tenant's cat, Fluffy, to be grandfathered as a permitted pet for the remainder of this tenancy. I note that this does not mean any other pet be permitted in the rental unit and that clause 5 of the Addendum would prevent any additional or future pets from being permitted in the rental unit for the remainder of the tenancy.

While I accept the tenant feels it is unfair to be asked for pet damage deposit so many years into the tenancy, I find that it is more likely than not that the tenant either did not have the cat at the start of the tenancy or that the presence of the cat was not known by the landlord at the time the pet damage deposit was dealt with in the tenancy agreement. Therefore, I make the following order pursuant to section 62(3) of the Act.

I ORDER the tenant to pay a **\$450.00** pet damage deposit within **15 days of receipt of this decision.** Furthermore, I do not give the tenant permission to pay this amount via a payment plan as I find the tenant has had months to save up the required amount to

pay the pet damage deposit. **Should the tenant fail to comply with my Order, the landlord is at liberty to issue a new 1 Month Notice citing the following:**

☐ Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

Given the above, **I find** that the landlord has provided insufficient evidence to support that the 1 Month Notice before me is valid. Therefore, **I cancel** the 1 Month Notice dated February 28, 2022.

I ORDER the tenancy to continue until ended in accordance with the Act.

As I find the tenant is required to pay a pet damage deposit and have so ordered, I do not grant the tenant their filing fee. Failure to pay the \$450.00 pet damage deposit as ordered above, may result in a new 1 Month Notice being issued to end the tenancy. I note that only Fluffy, the tenant's 12-year-old cat has been grandfathered and that no other pets are permitted by the tenant for the remainder of the tenancy.

Conclusion

The 1 Month Notice dated February 28, 2022 has been cancelled and is of no force or effect. The tenancy continues until ended in accordance with the Act. The tenant has been ordered to pay a \$450.00 pet damage deposit for Fluffy, their 12-year-old cat. Failure to comply with my Order may result in a new 1 Month Notice being issued by the landlord.

This decision will be emailed to both parties. The filing fee is not granted.

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: July 4, 2022

Residential Tenancy Branch