



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated July 5, 2022 (the "One Month Notice") pursuant to section 47;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Landlord's property manager KF attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant did not attend this hearing. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord, KF, and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified he only received notice of this hearing and no other supporting documents or evidence from the Tenant. Records of the Residential Tenancy Branch indicate that the Landlord was provided with a courtesy copy of the hearing documents on August 19, 2022.

The Landlord testified that he sent his documentary evidence to the Tenant via registered mail. The Landlord submitted a tracking number in support. That tracking number is referenced on the cover page of this decision. Tracking records for this package indicate that it was delivered on August 17, 2022. Based on the forgoing, I find

the Tenant was served with the Landlord's documentary evidence in accordance with section 88(c) of the Act on August 17, 2022.

Preliminary Matter – Tenant's Non-Attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant did not attend this hearing for her own application, while the Landlord duly attended, I dismiss the Tenant's claims for a repair order and to recover the Tenant's filing fee without leave to re-apply.

The Landlord and KF confirmed that the Tenant had not left the rental unit. Therefore, I directed that the hearing continue in the absence of the Tenant in order to deal with the issues relating to the One Month Notice.

Issue to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on March 1, 2014 and is month-to-month. Rent is currently \$982.10, due on the first day of each month. The Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$250.00, which are held by the Landlord in trust.

A copy of the One Month Notice has been submitted into evidence. The One Month Notice is dated July 5, 2022 and has an effective date of August 31, 2022. The One

Month Notice states that the Tenant has “seriously jeopardized the health or safety or lawful right of another occupant or the landlord”, and has “put the landlord’s property at significant risk”. It includes the following details of cause (portions redacted for privacy):

[The Tenant] was asked many times by the cartackers (sic) to please make sure that her dogs are dry and clean when they enter the building through the main entrance, We were told by professional carpet cleaners, that most of the direct and smell in the hallway emanate (sic) from [the Tenant’s] suite #4. Its (sic) very unhealthy for the other tenants! there are young children in the building! the smell has become unbearable (sic). [The Tenant] has to move for the health and safety of the other tenants.

The Landlord’s evidence indicates that a copy of the One Month Notice was sent to the Tenant via registered mail. The Landlord submitted a registered mail receipt and tracking number in support. The tracking information for this package shows that it was delivered on July 14, 2022.

The Landlord testified that they had been doing renovations at the rental building and were bothered by a terrible smell, which was getting worse and worse. The Landlord testified the carpet was never an issue before the Tenant moved in. The Landlord stated that the smell was so horrible that the other tenants could not use the main entrance. The Landlord stated that he gave the Tenant a written notice to inspect her suite.

KF testified that she started as the property manager for the rental building in July 2022. KF confirmed the stench was so “horrendous” that the Landlord’s painter ended up leaving the building on or around July 8 or 9, 2022. KF stated that she informed the Landlord of the problem right away. KF testified that the heat made the smell a lot worse. KF testified that the issue had been going on for a while, though the other tenants had not complained. KF testified that when she asked the other tenants why they were not complaining, they told her that they just stopped using the main entrance of the building.

KF testified that she did a routine inspection of the rental unit on July 11, 2022. KF stated the smell was so bad that she was concerned someone had passed away in the rental unit. The Landlord’s evidence indicates that the Tenant kept six pets in the rental unit. The Landlord submitted photographs of the rental unit taken during the inspection. KF testified that the dirt is so saturated into the Tenant’s carpet that the carpet will likely need to be removed so that something can be done underneath to deal with the smell.

KF testified that the Tenant has been made aware of the issue, but never came through with cleaning.

The Landlord testified they hired carpet cleaners to clean the carpet in the common areas on July 7, 2022, but the property is still smelly. The Landlord submitted a carpet cleaning invoice dated July 7, 2022, which indicates that the odours and stains appear to be coming from the rental unit. The Landlord submitted a previous carpet cleaning invoice to show that the two cleaning jobs were less than 1 year apart.

KF testified that currently, there is still a stench coming from the rental unit into the hallways.

The Landlord testified that they have been very reasonable, but unfortunately the Tenant did not cooperate. The Landlord testified the Tenant had promised previous managers many times that she would clean.

The Landlord submitted additional evidence including:

- a written statement from RP, a former manager of the rental property, dated August 10, 2022;
- photographs of dog hairs stuck on walls and railing in the hallway; and
- a written notice dated July 7, 2022 to inspect the rental unit on July 11, 2022.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

Based on the Landlord's evidence, I find the Tenant was served with the One Month Notice in accordance with section 88(c) of the Act on July 14, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until July 24, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on July 14, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, the Landlord issued the One Month Notice to end the tenancy on the grounds that the Tenant has "seriously jeopardized the health or safety or lawful right of another occupant or the landlord" and has "put the landlord's property at significant risk".

Sections 47(1)(d)(ii) and (iii) of the Act state as follows:

Landlord's notice: cause

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

[...]

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

[...]

(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; [...]

I note the photographs of the rental unit and common areas submitted by the Landlord are black and white, and I find them to be not very clear overall.

Nevertheless, I accept the Landlord and KF's undisputed testimonies that the carpet in the rental unit is saturated with a strong odour that spills out into the common hallway. I accept KF's undisputed testimony that the carpet inside the rental unit is so saturated with the odour that the carpet may need to be removed. I accept the Landlord's undisputed evidence that the smell is unbearable and seriously jeopardizes the health of other tenants in the building. I accept the Landlord and KF's undisputed testimonies that the Tenant has not taken steps to remediate the situation despite multiple warnings.

Based on the foregoing, I find the Tenant has seriously jeopardized the health of the other occupants and has put the landlord's property at significant risk by causing strong odours to saturate the carpet in the rental unit and to spill into common areas in the rental property. As such, I conclude that the Landlord established, on a balance of probabilities, cause for ending the tenancy under sections 47(1)(d)(ii) and (iii).

Accordingly, I dismiss the Tenant's claim to dispute the One Month Notice, without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act 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.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

The effective date of the One Month Notice has already passed. As such, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: September 15, 2022

Residential Tenancy Branch