



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, AS

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55.

The tenant requested:

- cancellation of the landlords’ One Month Notice to End Tenancy for Landlord’s Use of Property (“One Month Notice”), pursuant to section 47;
- an order allowing the tenant to sublet or assign the tenancy pursuant to section 65.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an

opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to have the notice set aside? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to sublet or assign the tenancy?

Background and Evidence

TM gave the following testimony. TM testified that this tenancy is currently on a month-to-month basis which began on October 1, 2020. The current monthly rent of \$2200.00 is due on the first of each month. TM testified that the tenant has without his permission or authorization, sublet the home and that the subletters have a dog and a cat. TM testified that there is a no pets clause in the tenancy agreement as well as no subletting without the landlord's consent. TM testified that a One Month Notice to End Tenancy for Cause was issued on May 21, 2022 with an effective date of June 30, 2022 for the following reason:

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:

- (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];

TM testified that in May 2022 he advised the tenant about the no pet clause as well as the no subletting to which he was assured that it would be rectified by the tenant. TM testified that as of today's hearing both issues are still unresolved and seeks an order of possession.

CG gave the following testimony. CG testified that he does acknowledge and confirm that he has "guests" staying with him in the home and that he occasionally checks in to make sure the property is maintained. CG testified that he doesn't currently reside there as he is dealing with a medical issue. CG testified that he also acknowledges that they had a dog and cat but, the cat was removed after six weeks. CG testified that he hopes to come to an amicable end.

Analysis

When a landlord issues a notice to end tenancy under section 47 of the Act, they bear the responsibility of providing sufficient evidence to support the issuance of the notice. In the matter before me, the tenant does not dispute the landlord's claims, in fact, the tenant acknowledges and confirms that he had unauthorized parties living in the home without the landlord's permission and that those parties had a cat and dog which was in contravention of the tenancy agreement that he had with the landlord.

After careful consideration of the testimony and documentation before me I find that the landlord has provided sufficient evidence to justify the issuance of the notice to end the tenancy. Despite the landlords best attempts and almost five full months of warnings, the tenant did not rectify the issues, accordingly; I find that the landlord is entitled to an order of possession.

I find that the landlord's One Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. I dismiss the tenant's application to cancel the One Month Notice and issue the landlord an Order of Possession in accordance with section 55 of the *Act*.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of 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: October 04, 2022

Residential Tenancy Branch