



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing, and the tenant was accompanied by another person for support. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated August 17, 2022 was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2017 and reverted to a month-to-month tenancy after February 28, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$1,295.00 was payable on the 1st day of each month, which has been increased and is now \$1,094.00 per month, and there are

no rental arrears. On February 27, 2017 the landlord collected a security deposit from the tenant in the amount of \$647.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on August 17, 2022 someone in the landlord's office served the tenant with a One Month Notice to End Tenancy for Cause by registered mail. A copy of pages 1 and 2 only of the 3-page form has been provided by the tenant for this hearing. It is dated August 17, 2022 and contains an effective date of vacancy of September 30, 2022. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On April 4, 2022 the occupant in a unit directly above this rental unit called the building manager saying that a smoke alarm was sounding and that the occupant called the fire department. The fire department personnel arrived and a smoky haze was in the tenant's apartment, and the fire department personnel found that a pot had boiled dry on the stove. The tenant was still asleep inside, and did not hear the fire department personnel knock on the door. The smoke was extracted.

When asked why the landlord waited more than 4 months to issue the One Month Notice to End Tenancy for Cause, the landlord's agent replied that the landlord was not available and the landlord's agents had to wait for a discussion with the owner about whether or not to terminate the tenancy.

No written notice was given to the tenant about correcting a breach of a material term of the tenancy agreement.

The tenant testified that the tenant was working a lot and was having a stressful time at work and fell into a deep sleep. Normally, the tenant would answer the door, but this was an unusual event; the tenant laid down and fell asleep. The tenant woke up when

the fireman opened the door, and the tenant apologized as soon as he woke up. No such event has happened since.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it.

The landlord testified that the incident happened on April 4, 2022 and the landlord waited until August 17, 2022 to decide whether or not to end the tenancy. Although leaving a pot on a stove may put the landlord's property at significant risk, and may seriously jeopardize the health or safety or lawful right of another occupant or the landlord, I am not satisfied that issuing the Notice more than 4 months after the incident gives cause to end the tenancy. The tenant testified that it was an isolated incident, and the landlord's agent did not dispute or question that.

To end a tenancy for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, the landlord must give the tenant written notice, a reasonable time to correct the breach, and must indicate in the written notice that any further breaches will result in ending the tenancy. Since the landlord has not done so, I cannot make a finding that the landlord has established a breach of a material term of the tenancy agreement.

The landlord has not provided a copy of the One Month Notice to End Tenancy for Cause, and the tenant has only provided pages 1 and 2 of the 3-page form. A landlord must use the approved form, and since the landlord has not provided a copy, I cannot be satisfied that any notice given was in the approved form.

Therefore, I cancel the Notice and the tenancy continues.

The tenant did not lead any evidence with respect to the application that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the application.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by serving the landlord with the order and filing

the order in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 17, 2022 is hereby cancelled and the tenancy continues.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: December 22, 2022

Residential Tenancy Branch