



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 28, 2022, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on November 18, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant called in on his own behalf and the Landlord was represented by the Property Manager, G.M.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date of Decision

The hearing of the Application concluded on November 18, 2022. This Decision was rendered on December 21, 2022. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's Property Manager testified as follows. He confirmed that the tenancy began February 1, 2021. The monthly rent was initially \$1,300.00 and was raised to \$1,319.

The Property Manager testified as to the reasons for ending the tenancy by referring to an email from the Building Manager, B.N. in which the following was noted:

- The Tenant was repeatedly late paying rent and a 10 Day Notice to End Tenancy was issued on June 1, 2021. There were no details regarding further late payments after this Notice was issued.
- The Tenant smoked in his rental unit contrary to his tenancy agreement. A warning letter was sent to the Tenant in October of 2021 regarding smoking.

- An electrical inspection was done in August 2022 and the condition of the unit was deemed unsatisfactory and there was smell of cigarettes. Following this, the unit was inspected on September 29, 2022 and the unit was unsanitary and again smelled of cigarettes. The Landlord submitted five photos taken on that date in support.

G.M. confirmed that the Tenant was not provided any further written letters as to the smoking; however, G.M. stated that the Tenant was verbally warned that his tenancy was in jeopardy.

The Building Manager also alleged that the Tenant stole from another tenant. In this respect G.M. stated that on June 23, 2022 the Tenant found a phone case on the floor outside the elevator. He removed the money and returned the phone to the ground. The Landlord submitted videos of this in evidence. The Tenant was not charged criminally, but the building manager approached him and the Tenant originally denied it and then he was offered the opportunity to return the funds without charges. The Tenant slid the funds under the building managers door approximately an hour later.

The Tenant responded to the Landlord's evidence and submissions as follows. The Tenant stated that he moved into the rental unit January 2020.

The Tenant confirmed that he is not permitted to smoke in his rental unit and denied smoking in the unit. The Tenant stated that approximately 10 months into his tenancy the Landlord did an inspection of all the units. The Tenant claimed that he didn't understand the rules and admitted to smoking in the unit and he spoke with the building manager and they agreed he would not smoke in the unit. The Tenant testified that he has not smoked since then. He confirmed he smokes in the parking lot. The Tenant admitted that his clothes smell like cigarette smoke as he is a smoker, and further said he lights candles in the suite and they may smell like smoke after being blown out.

In terms of the Landlord's allegation that his unit was not sanitary, the Tenant agreed that at that 10 month inspection his bedroom was a bit of a mess but claimed to have cleaned it up after. He also stated that on the date of the electrical work the building manager was only there for 10 seconds and then left. The Tenant stated that there was no contact with the Landlord after the electrician was there and there was no verbal or written discussions with the Landlord about the condition of his rental unit or any issues with his tenancy.

The Tenant stated that the Landlord then issued the Notice which received by registered mail in mid September when he received the Notice.

The Tenant further testified that after issuing the Notice, and on September 29, 2022, the Landlord attended the rental unit and took photos of his unit.

In terms of the Landlord's allegation that he breached a term of the tenancy agreement and stole from another resident, the Tenant stated that on June 23, 2022 he saw a cell phone in the lobby and he picked it up. He saw some cash and removed it because he knew that others would take the cash. He put the phone back where it was assuming the person would be back to find the phone. He brought the cash back to his suite. The Building Manager contacted him and then he put the money back and included a note. The Tenant confirmed that he wrote a note indicating he had found the funds and that he was returning it.

Analysis

The Landlord seeks to end the tenancy for Cause pursuant to section 47 of the *Act*, which reads as follows.

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.

(2) A notice under this section must end the tenancy effective on a date that is

- (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.

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

Ending a tenancy is a significant request. This is clear from the wording in section 47 wherein for example a tenancy will end if a tenant causes *extraordinary* damage, or *significantly* interferes with or *unreasonably* disturbs another tenant or the Landlord. A landlord seeking to end a tenancy for cause bears the burden of proving the tenancy should end for the reasons cited on the notice.

In this case, I am not satisfied the Landlord has met that burden in terms of any of the allegations on the Notice. In terms of the Landlord's evidence, I had an unsworn email from the building manager. In contrast, I had the affirmed testimony of the Tenant. The Tenant attended the hearing and was available for questions as to his testimony and evidence. Conversely, the Landlord's building manager submitted an email with general allegations and was not available to answer questions regarding any of the allegations. Consequently, where the evidence conflicts, I prefer the Tenant's affirmed evidence.

While the Tenant may have been late paying rent at the beginning of his tenancy, there is no evidence before me that this has been an ongoing issue or that the Tenant has been *repeatedly* late paying rent. Further, I am not satisfied the Tenant was sufficiently warned that his tenancy was in jeopardy due to his rent payments.

Further, while the Tenant admits he smoked in the rental unit when he first moved in, he testified that he stopped smoking in the unit when the issue was brought to his attention by the property manager. He conceded that his clothing may smell like smoke which may explain why the unit smelled during inspections. I accept the Tenant's testimony that he does not smoke in his rental unit and I am not persuaded otherwise by the Landlord's limited evidence in this regard.

The Landlord alleged the Tenant was not keeping his rental unit in a sanitary condition. I accept the Tenant's testimony that his bedroom was not tidy at the 10 month inspection, but I am not satisfied the unit was unsanitary, or in a condition warranting an

end to this tenancy. Even if I were persuaded by the Landlord's photos, which I am not, I accept the Tenant's testimony that the photos were taken after the Notice was issued.

I accept the Tenant's testimony that he found a cell phone and cash in the common area of the rental building. I also accept his explanation that he removed the cash because he was concerned someone else might take it. The evidence before me confirms he returned the cash to the building manager's suite with a note acknowledging what had happened. While it would have been preferable for the Tenant to return the cash without prompting, I am not satisfied this supports a finding the Tenant "stole from another tenant".

As noted, ending a tenancy is a significant request and the Landlord must prove the reasons for ending the tenancy. In this case I find the Landlord has submitted insufficient evidence to support a finding that this tenancy should end for cause. I therefore grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

Having been successful in his Application, the Tenant is entitled to recover his filing fee. He may reduce his next months' rent by \$100.00 as compensation for the amount paid.

Conclusion

The Tenant's application to cancel the Notice and recover the filing fee is granted.

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 21, 2022

Residential Tenancy Branch