



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOGWOOD HOLDINGS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an order of possession because the tenant gave notice to end the tenancy, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing, and the tenant was assisted by an Advocate. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the tenancy should end as a result of written notice to end the tenancy being given by the tenant?

Background and Evidence

The landlord's agent testified that this tenancy began as a fixed term tenancy on April 1, 2016, expiring on August 31, 2016. A new month-to-month tenancy agreement was entered into for a tenancy beginning on December 1, 2017, and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$301.00, payable on the 1st day of each month and there are no rental arrears. On March 22, 2016 the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an

apartment in a 3 story building, and a copy of the tenancy agreements have been provided as evidence for this hearing.

The landlord's agent further testified that on January 24, 2022 the tenant was personally served with a One Month Notice to End Tenancy for Cause and a copy has been provided for this hearing. It is dated January 24, 2022 and contains an effective date of vacancy of February 28, 2022. The reason for issuing it states: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The tenant disputed it, and the landlord cancelled the Notice after receiving communication from a Resource Centre Advocate, and the tenant signed a Letter of Commitment, a copy of which has been provided for this hearing; and the tenant withdrew the application.

Smoking is prohibited on the property which is contained in the Addendum to the tenancy agreement, however the tenant has continued to smoke on the balcony of the rental unit. The Letter of Commitment states, in part, that the tenant signed the Letter of Commitment in exchange for consideration that the landlord has agreed to cancel the One Month Notice to End Tenancy for Cause, and that breaking the commitment is a breach of a material term of the tenancy agreement and can result in eviction. The tenant has been smoking on the property since 2019 and the landlord has made many efforts to convince the tenant that smoking is not permitted.

On June 9, 2022 the tenant signed a Termination Notice effective at 1:00 p.m. on July 31, 2022, and a copy has been provided for this hearing. A pre-move-out inspection was completed on July 14, 2022 and the tenant was asked about keys. However the tenant changed his mind and said a few times that he was not moving out. On July 29, 2022 when the landlord's agents went to meet with the tenant to see if he was ready for the move-out condition inspection report, the tenant again said he's not moving out. The landlord does not agree to continue the tenancy.

The tenant testified that he recalls the landlord's agent seeing the tenant with a cigarette in his hand, and the parties spoke. The tenant broke his promise to stop smoking, and apologizes that the tenant has smoked on the balcony in the past.

Due to housing shortages, it will take some time to find another place, and the tenant will have to apply for new housing, and doesn't know how long that will take. When the tenant signed the notice to end the tenancy effective July 31, 2022, the tenant thought he would be able to find a place, but it's difficult. The tenant apologizes for the violation of the tenancy agreement and asks for forgiveness.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

As indicated by the tenant, he apologized, and due to weather and the housing crisis it will be difficult to find accommodation. Giving another chance would be reasonable.

SUBMISSIONS OF THE LANDLORD'S AGENT:

After the landlord agreed to cancel the One Month Notice to End Tenancy for Cause, the landlord's agent saw the tenant smoking again and sent an email to the tenant's Worker on June 1, who got in touch with the tenant, and the tenant attended the landlord's office. If the tenant hadn't signed the tenant's notice to end the tenancy, the landlord would have issued another One Month Notice to End Tenancy for Cause.

The landlord would be agreeable to an effective date of vacancy for another month or two.

Analysis

Firstly, I refer to Residential Tenancy Policy Guideline 11 – Amendment and Withdrawal of a Notice to End Tenancy, which states, in part that neither a landlord nor a tenant can unilaterally withdraw a notice to end tenancy, and can only be withdrawn prior to its effective date with the consent of the landlord or tenant to whom it is given.

In this case, the landlord has not given consent to withdraw the tenant's notice to end the tenancy, and the landlord's agent submitted that if the tenant had not given notice, the landlord would have issued another One Month Notice to End Tenancy for Cause.

Since the landlord has not agreed, I find that the landlord is entitled to an Order of Possession. The landlord's agent agreed to an effective date of vacancy for another month or two. Since rent is payable on the 1st day of each month, I grant the Order of Possession effective at 1:00 p.m. on February 28, 2023. The tenant must be served with the order, which may be filed in the Supreme Court of British Columbia and enforced.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the landlord in that amount, and I order that the landlord may keep that amount from the security deposit held in trust, or may serve the tenant with the order and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on February 28, 2023 and the tenancy will end at that time.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* and I order that the landlord may keep that amount from the security deposit held in trust, 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 26, 2022

Residential Tenancy Branch