



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHERRY CREEK PROPERTY SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened based on the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a One Month Notice to End Tenancy for Cause dated August 3, 2022 (1 Month Notice).

The tenant and a landlord agent, VK (agent) attended the teleconference hearing. The parties were affirmed and both parties were provided the opportunity to ask questions during the hearing. Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing and make submissions to me.

As both parties confirmed that they had been served with documentary evidence and had the opportunity to review that evidence, I find both parties were sufficiently served according to the Act. I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per RTB Rule 3.6. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses. They also were advised that the decision will be emailed to both parties.

Issue(s) to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on June 1, 1999. Originally monthly rent was \$333 and at the time of the hearing the parties confirmed that monthly rent was \$626 per month and remains due on the first day of each month. The tenant paid a security deposit of \$165 at the start of the tenancy. The tenant continues to occupy the rental unit.

The 1 Month Notice was dated August 30, 2022 and includes an effective vacancy date of September 30, 2022. The tenant confirmed receiving the 1 Month Notice on August 3, 2022 and disputed it on August 5, 2022, when a fee waiver was granted.

The landlord alleges one cause as follows:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.

In the Details of Cause portion of the 1 Month Notice, the landlord wrote:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

The tenant in 110 2117 2nd St N Cranbrook has been given written notice on March 2, 2022 and July 6, 2022 advising that the foul smell from her kitty litter is wafting into common areas and surrounding units disturbing the neighbor's right to peaceful enjoyment of their property, and that shall we receive further complaints, an eviction notice will be issued. We received further complaints that the smell has not been dealt with and is negatively impacting neighbors. The owner has asked that the tenant be issued this eviction notice.

[Reproduced as written]

Both parties were advised that as the 1 Month Notice specifically mentioned a foul smell from the tenant's kitty litter wafting into other areas of the building, that I would be limiting the evidence to kitty litter odour and no other complaints that were not being alleged in the 1 Month Notice as they were not relevant to this matter before me.

Landlord's Evidence

The landlord presented two written warning letters, both of which address a "kitty litter smell", the first of which was dated March 2, 2022 (March Letter) and the second of

which was dated July 6, 2022 (July Letter). In the July Letter the landlord indicates that the tenant is being given their final warning regarding the kitty litter smell. The agent confirmed that there were no written complaints submitted from other occupants in the building for my consideration and that the landlord only received phone calls of complaint regarding the tenant's kitty litter. The landlord did not have any witnesses present to testify at the hearing.

The agent testified that since the 1 Month Notice was issued there have been no additional complaints related to the kitty litter odour.

The agent referred to a photo during the hearing where some cat food is shown on the floor of the rental unit.

Tenant's response

The tenant testified that one week after being served with the 1 Month Notice, the tenant put their cat up for adoption through a rescue organization and as a result, they no longer have their cat or the litter box for the cat. The tenant stated that in terms of the photo of some cat food, they no longer have the cat or a kitty litter box.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Where a tenant applies to dispute a 1 Month Notice within the timelines permitted under the Act, the landlord has to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 47 of the Act permits a landlord to seek termination of a tenancy by issuing a 1 Month Notice for a variety of causes. In this case, the landlord alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

Upon review of the 1 Month Notice, I find that 1 Month Notice was completed in accordance with the requirements of section 52 of the Act.

While the landlord may have had cause to issue the 1 Month Notice at the time the 1 Month Notice was issued due to the odour related to the tenant's kitty litter box, I have considered *Senft v. Society For Christian Care of the Elderly*, 2022 BCSC 744, where the British Columbia Supreme Court suggests that I must consider the post-Notice conduct of the tenant. In other words, in this case, I must consider the current state of the rental unit, as "*post-notice conduct is relevant when deciding whether an end to the tenancy was justified or necessary in the context of the protective purposes of the RTB*".

In the matter before me, I find there is sufficient evidence before me to support that a week after being served with the 1 Month Notice specifically relating to odour originating from the tenant's kitty litter box, the tenant put their cat up for adoption and removed the kitty litter box. I find this action to have addressed the cause listed on the 1 Month Notice and that other tenants and the landlord are no longer being negatively impacted by the tenant's cat or the cat's kitty litter box. Considering the above, I find I must cancel the 1 Month Notice dated August 3, 2022, due to the post-Notice conduct of the tenant. For this reason, I grant the tenant's application and I order the August 3, 2022, 1 Month Notice is cancelled, and of no force or effect.

I order the tenancy to continue until otherwise ended in accordance with the Act.

Conclusion

The tenant's application is successful.

The 1 Month Notice dated August 3, 2022 has been cancelled and is now no force or effect.

The tenancy shall continue until ended in accordance with the Act.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 12, 2023