



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, FFT

Introduction

On October 31, 2022, the Tenants filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause, (the “Notice”) dated October 22, 2022, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and one of the Tenants (the Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice dated October 22, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee of their application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Notice recorded that the Landlord served the Notice to end tenancy to the Tenants on October 22, 2022, by posting the Notice on the front door of the rental unit. The Tenants provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- *Tenant has assigned or sublet the rental unit/site/property/park without the landlord's written consent.*

The Notice states that the Tenants must move out of the rental unit by November 30, 2022. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within 10 days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Notice was issued due to ongoing complaints about the behaviour of the Tenant's dog. The Landlord testified that they have been receiving complaints from the other occupant on the rental property that the Tenant's dog has been permitted to roam the rental property on its own and that the dog is aggressive toward the other occupant, their family, and their customers. The Landlord testified that the Tenant's dog chases after cars, barking at the occupants of the vehicles, and corralling the occupants in their vehicles; some of which were too fearful of the dog to get out of their vehicles.

The Landlord testified that they have spoken to the Tenants several times in an attempt to resolve the situation, asking the Tenant to keep their dog on a leash while outside but the Tenants refuses.

The Tenant testified that they used to let their dog go outside unsupervised and agreed that their dog does bark and chase after cars that the dog does not recognize but that the behaviour is not aggressive.

The Tenant agreed that the Landlord has spoken to them about their dog's behaviour but that they do not feel it's that bad, and that they do not like to have their dog on a leash and their dog does not like it.

The Landlord testified that they served a written warning letter to the Tenants on September 22, 2022, regarding their dog's bad behaviour, asking them to leash their dog while outside.

The Tenant testified that ever since September 2022, they only let the dog out when they can go with them, so the dog is always supervised. The Tenant was asked if their dog obeys their verbal commands, the Tenant testified that the dog does respond to them, but that the dog does get distracted by something, like a car they do not recognize, and that will cause them to not respond to their verbal commands.

The Tenant was asked if they were able to prevent their dog from barking and chasing after cars or people using verbal commands, and the Tenant responded, "not always". The Tenant was asked if they would leash their dog, and the Tenant testified that they felt it was unkind to the animal as the dog had not been trained to be on a leash.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants received the Notice to End Tenancy on October 25, 2022, three days after the Notice was posted to the front door of the rental unit, pursuant to the deeming provisions set out in section 90 of the *Act*. Pursuant to section 47 of the *Act*, the Tenants had ten days to dispute the Notice. Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (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.

Therefore, I find the Tenants had until November 4, 2022, to file their application to dispute this Notice. I have reviewed the Tenants' application for dispute resolution, and I find that the Tenants filed their application on October 31, 2022, within the legislated timeline.

I accept the agreed-upon testimony of these parties that the Tenants have allowed their dog to run around the common areas of this rental property off-leash, and that the Tenants refuse to use a leash on their dog. I also accept the testimony of the Tenant that their dog does not respond to their verbal commands, and will chase and bark at cars, the other occupants of the rental property and their guests.

I have carefully reviewed the testimony of the parties and the documentary evidence that I have before me in this case. I find that the actions and behaviour of the Tenants' dog, agreed upon by these parties during their verbal testimony provided in these proceedings, would have been unreasonably disturbing to the other occupants of the rental property. Additionally, I find it unreasonable of these Tenants to refuse to leash their dog while in common areas, when it is agreed that they lack the ability to control their animal with verbal commands.

For the reasons stated above, I find that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord. Therefore, I dismiss the Tenants' application to cancel the Notice dated October 22, 2022.

Section 55(1) of the Act states the following:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service of this order on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

As the Landlord has been successful in proving sufficient cause to end this tenancy on the first point of their Notice, I find that there was no need for me to render a decision on the validity on the second point indicated on the Landlord's Notice to end tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in their claim, I find that the Tenants are not entitled to the recovery of their filing fee for this application.

Conclusion

The Tenants' application to cancel the Notice, dated October 22, 2022, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants 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: March 15, 2023

Residential Tenancy Branch