



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes ET, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56; and
- an authorization to recover the filing fee, under section 72.

Landlords SN and WT and tenants YW, YL (the tenant) and DW attended the hearing. The landlords were represented by agent KH (the landlord). The tenants' witness JW also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

1. an order for early termination of a tenancy?

2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on December 01, 2020. Monthly rent is \$1,320.00, due on the first day of the month. The landlord collected a security deposit in the amount of \$660.00 at the outset of the tenancy and currently holds it in trust. The tenancy agreement was submitted into evidence. It indicates the tenant can not have pets.

The tenant occupies the basement suite unit, and the landlord occupies the main floor of the same property.

The landlord learned the tenant had a cat in November 2022 and asked the tenant to remove the cat immediately. The landlord affirmed the tenant has been hiding the cat before each inspection and continues to have the cat.

The tenant stated that she got the cat in September 2022 and removed the cat from the rental unit on January 26, 2022.

Both parties agreed the landlord served and the tenant received a one month notice to end tenancy for cause (the Notice) on January 24, 2023 because the landlord claims the tenant has a cat in the rental unit. The landlord submitted a copy of the Notice into evidence. It states: "The existence of pet and the continuous disregards to the humidity inside of the basement bathroom are damaging to the landlord's property and health conditions."

The tenant disputed the Notice and a hearing is scheduled for May 23, 2023. The landlord learned the tenant disputed the Notice on February 10, 2023.

Answering my question, the landlord testified that after she served the Notice the situation has not changed, and the tenant continues to have the cat.

The landlord submitted this application on March 03, 2023 because the landlord and his partner are suffering, as they are elderly and allergic to cats. The landlord and his partner can not move to another house, as they do not have relatives in British Columbia. The landlord and his partner are taking medication three times per day because of their allergy to cats and they vomit 'every few days' because of the cat.

The tenant said that the landlord and his partner are not allergic to cats and are not sick because of the cat. The tenant affirmed the landlord wants to end the tenancy because the current market rate is much higher.

The landlord submitted a letter signed by a physician on February 07, 2023: "[landlord WT] is allergic to cat.", and another letter dated February 14, 2023: "[landlord SN] [not legible] when exposed to cat excrement."

The landlord submitted a prescription issued on January 19, 2023 for landlord SN for two medications and a new prescription on February 14, 2023 for only one of the medications prescribed earlier. The landlord also submitted another document that is not legible.

Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, the reasons to end the tenancy early. This means that the landlord must prove, more likely than not, that the facts stated on the application happened and it would be unreasonable, or unfair to the landlord or other tenants, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Section 56 (2) of the Act states:

(2)The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a)the tenant or a person permitted on the residential property by the tenant has done any of the following:

(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;

- (iii) put the landlord's property at significant risk;
- (iv) engaged in illegal activity that
 - (A) has caused or is likely to cause damage to the landlord's property,
 - (B) 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
 - (C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (v) caused extraordinary damage to the residential property, and
- (b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause] to take effect.

Residential Tenancy Branch Policy Guideline 51 explains the importance of the landlord providing evidence that is unreasonable or unfair to wait to end the tenancy with a one month notice:

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

(emphasis added)

I accept the uncontested testimony that the landlord served the Notice because the landlord claims the tenant has a cat in the rental unit.

I accept the landlord's testimony that after the landlord served the Notice on January 24, 2023 the situation has not changed.

I find the landlord's testimony about vomiting was vague, as the landlord stated that he and his partner vomit 'every few days'.

The landlord did not provide testimony about changes in his health after the landlord served the Notice. The letters dated February 07 and 14, 2023 do not indicate a change in the landlord's health condition. The landlord received a prescription for two medications on January 19, before the Notice was served on January 24, and the prescription was renewed for only one of the medications on February 14, 2023.

Considering the above, I find the landlord failed to prove, on a balance of probabilities, that the health situation of the landlord or his partner changed after the landlord served the Notice on January 24, 2023, or that any change happened. I find the landlord applied for an early termination of the tenancy for the same reason that the landlord served the Notice.

Based on the above, I find the landlord failed to prove, on a balance of probabilities, that it would be unreasonable to wait for the Notice to take effect, as required by section 56(2)(b) of the Act.

Therefore, I dismiss the landlord's application without leave to reapply.

As the landlord is not successful in this application, the landlord must bear the cost of the filing fee.

I note that I am not making any findings about the Notice.

Conclusion

I dismiss the landlord's application without leave to reapply. The tenancy continues 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*.

Dated: March 28, 2023

Residential Tenancy Branch