



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HARRON INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNC
Landlord: OPC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 15, 2023.

The Landlord's Agent (referred to as the "Landlord") and the Tenant both attended the hearing and provided affirmed testimony. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding and evidence package and the Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. I find both parties sufficiently served each other with the required documents.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The landlord issued the Notice for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *Put the Landlords property at significant risk*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under the “Details of Cause” section, the landlord specified that the Tenant was given a Notice of Breach letter (of a material term of the tenancy agreement) regarding having “liquid filled items” (washing machine) in the rental unit, contrary to the tenancy agreement. The Tenant was provide 14 days to remove the washing machine, but did not. The Landlord did an inspection on December 12, 2022, and there were two washing machines in the kitchen of the rental unit, contrary to the breach letter, and the tenancy agreement.

In the hearing, the Landlord testified that last summer (2022), the Landlord became aware that the Tenant had a washing machine in his rental unit, and this was confirmed with a suite inspection. Following that, the Landlord, on August 5, 2022, issued a breach letter to the Tenant, specifying the following:

Please be advised that the incident(s) reported is a breach of Sec. 47(1) of the Residential Tenancy Act and a breach of a reasonable material term of the Standard Residential Tenancy Agreement. Sec. 47 (1) below indicates the applicable grounds under which your tenancy could be ended should you continue to breach this clause in our agreement.

The Residential Tenancy Act, Sec.47 (1) – Grounds for Termination

(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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;

(h) the tenant

I. has failed to comply with a material term, (i.e. no-smoking clause) and

II. has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

To resolve this issue, and breach of the lease, we're requesting you take immediate steps to permanently correct this situation on or before (date) **14 days** by doing the following:

Clean the unit. Remove appliances - washer , dryer

Should there be any further incidents or circumstances warranting termination of tenancy, we will have no alternative but to issue such notice. We look forward to your cooperation in this matter.

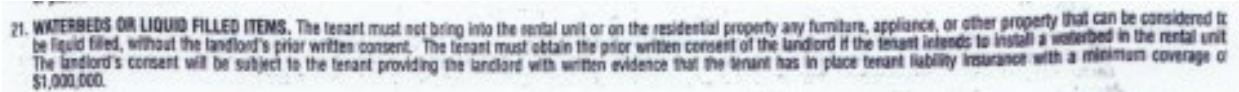
Sincerely,
Management

The Landlord stated that they inspected the unit again on or around December 12, 2022, and noted that there were two washing machines in the rental unit, and that the

Tenant had the washing machine hooked into the kitchen sink (hose laying across the counter). The Landlord noted that there was water in the drain hose, which suggested that it was recently used. The Landlord stated that the rental units are not set up for washing machines, and the Tenant is putting the property, and others in the building at risk of a flood or other damage.

The Tenant stated that he does not have a dryer, only a washing machine, which he acknowledged using. The Tenant stated it is safe to operate, as he has used it for quite some time. The Tenant stated that it is only the new owners of the building who are taking issue with this machine. The Tenant stated he has lived in the unit for 18 years, and the new owners have owned the building for about 6 years.

The Landlord stated that the Tenant signed a tenancy agreement, many years ago, specifying the following:



21. WATERBEDS OR LIQUID FILLED ITEMS. The tenant must not bring into the rental unit or on the residential property any furniture, appliance, or other property that can be considered to be liquid filled, without the landlord's prior written consent. The tenant must obtain the prior written consent of the landlord if the tenant intends to install a waterbed in the rental unit. The landlord's consent will be subject to the tenant providing the landlord with written evidence that the tenant has in place tenant liability insurance with a minimum coverage of \$1,000,000.

The Tenant asserts that this term does not apply to washing machines.

The Landlord provided registered mail tracking information in the hearing to demonstrate that the Tenant received the 1 Month Notice on January 14, 2023.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

I turn to the Notice issued by the Landlord and I find it meets the form and content requirements under section 52 of the *Act*.

I turn to the first ground the Landlord identified on the Notice which is that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I note the tenancy agreement has a term which states that "the Tenant must not bring into the rental unit, or on the residential property any furniture, appliance, or other property that can be considered to be liquid filled". I note the Tenant asserts that this does not apply to washing machines. However, I find the primary purpose of a washing machine is to fill with water, and clean clothes. I

find this could be construed as a fluid filled appliance. Further, the Landlord issued a breach letter to the Tenant, clearly identifying that there was a problem, that the problem regarding the washing machine was a breach of a material term of the tenancy agreement. I note the breach letter gave the Tenant 14 days to take care of the issue, otherwise the tenancy may be ended. I note the Landlord gave the Tenant several months to remove the washing machine. However, he did not, and when it was found to be still on site in December 2022, the Landlord proceeded to issue this 1 Month Notice.

I turn to Residential Tenancy Policy Guideline #8 which speaks to “Material Terms”:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

Ultimately, I find the Landlord has sufficiently met the requirements, set out in Policy Guideline #8. I find the Landlord has sufficient cause to end the tenancy, based on a breach of a material term of the tenancy agreement.

The Tenant’s application to cancel the 1 Month Notice is dismissed, without leave. The Landlord is issued an Order of Possession, pursuant to section 55 of the Act. I find the 1 Month Notice complies with the form and content requirements under section 52.

Pursuant to section 72 of the Act, the Landlord granted the recovery of the filing fee paid, since they were successful in this hearing. The Landlord may retain \$100.00 from the Tenant’s security deposit.

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: May 17, 2023

Residential Tenancy Branch