



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application filed by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and respective evidence submissions.

Issues

Should the landlord’s One Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

Background and Evidence

The tenancy for this apartment unit began on December 6, 1996.

The landlord served the tenant with a One Month Notice on March 1, 2023 with an effective date of April 30, 2023. The One Month Notice was issued on the following ground(s):

- the tenant or a person permitted on the residential property by the tenant has:
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The tenant filed an application to dispute the Notice within the applicable time period under the Act.

The landlord submits that the tenant breached clause #16 of the tenancy agreement by continuously feeding birds from the balcony of the rental unit. The landlord submitted copies of two caution notices and a letter issued to the tenant dated March 25, 2022, April 13, 2022 and June 17, 2022. The landlord submitted pictures of a trough the tenant had set up on his balcony to feed birds. The landlord submits that this also attracted rats to the building. The landlord testified that the tenant at one time even had a crow in a cage inside his unit which was also a breach of clause #16 of the tenancy agreement. She witnessed the crow herself during an inspection and the tenant pushed her away when she tried taking a picture. The landlord submitted pictures of the siding under the tenant's unit showing signs of bird droppings as well as pictures of the damaged deck. The landlord submits that birds sitting and pecking on the deck have caused this damage. The siding was recently replaced, and the pictures demonstrate the tenant has continued to feed the birds after it was replaced. The landlord submitted a picture of a bird on the tenant's balcony with food in its mouth. The landlord testified that she herself has witnessed birds going on the tenant's balcony for food. The landlord submits the issue has been going on for over one year and other tenants have made verbal complaints. The landlord submits the tenant has been asked to stop feeding the birds several times and has been cautioned that his tenancy was in jeopardy.

The tenant testified that he is on disability and been living in the building for 25 years. The tenant submits that his balcony was damaged when he first moved in and the previous manager had told him that water often pools on the balcony. The tenant submits that he is always cleaning water off the balcony. The tenant submits that the new manager is just harassing him, and that he has been complying with everything. The tenant submits that he has closed off the patio area and no longer uses it and he has not been feeding birds. In regard to the recent picture of the bird on his balcony with food in its mouth, the tenant submits the bird could have got the food from his recycle bin.

The tenant's witness R.P. submits that there is a rat problem everywhere in the area and there are also birds everywhere. R.P submits that the tenant is not the only one

feeding birds. He had a habit of feeding birds but since the renovation work was done on the balcony a year ago he stopped feeding the birds. He has not been feeding birds for months and has his patio closed since receiving the One Month Notice.

In reply, the landlord submits she has been the manager of the building for 17 years and she never had any interactions with the tenant previous to this issue; therefore, she is not harassing him or out to get him as alleged by the tenant.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

I find the tenancy agreement clearly stipulates that the tenant is not permitted to feed or keep birds. This was not disputed by the tenant. It was also not disputed by the tenant that he had a trough set up on the balcony to feed birds. The landlord's testimony of discovering a crow in a cage inside the tenant's unit was also not disputed. The tenant also did not dispute receiving several caution notices. Rather, the tenant claims to have stopped feeding the birds and no longer using his patio. The tenant's witness testified that the tenant has not been feeding birds since receiving the Notice to End tenancy. On a balance of probabilities, I accept the landlord's testimony and evidence and find that the tenant continued to feed the birds even after receiving multiple cautionary notices to stop doing so. I find this is supported by the landlord's testimony stating she has witnessed birds on the tenant's balcony herself and the pictures showing the extensive bird dropping damage directly under the tenant's unit as well the picture of the bird on the balcony with food in its mouth. Given the tenant's undisputed history of feeding birds and even having one in a cage in his unit, I find it is more likely that the tenant continued to feed the birds versus the tenant's account that the food was from the recycle bin. Further, I find that even if the tenant has stopped feeding the birds after receiving the Notice to End Tenancy, he acted too late at this point.

I find the landlord took reasonable steps to notify the tenant of the breach and also provided the tenant with more than ample opportunity to correct the breach prior to issuing the One Month Notice.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the One Month Notice on the grounds of a material breach of the tenancy agreement. The tenant's application to cancel the One Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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: June 22, 2023

Residential Tenancy Branch