



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DPM RENTAL MANAGEMENT GROUP, DPM RENTAL
MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call on June 21, 2023, having been adjourned from June 1, 2023, concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing with Legal Counsel and was accompanied by a person for support. An agent for the landlord also attended. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged with the exception of a letter provided in the landlord's evidence. All evidence except the evidence not provided to the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause dated March 6, 2023 was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 1, 2021 and reverted to a month-to-month tenancy after February 28, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$975.00 was payable on the 1st day of each month, which has been increased to \$989.00, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$487.50, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single room occupancy, which is set up with rooms to rent and shared living spaces.

The landlord's agent further testified that on March 6, 2023 a colleague of the landlord's agent served the tenant with a One Month Notice to End Tenancy for Cause, and a copy has been provided by the tenant for this hearing. It is dated March 6, 2023 and contains an effective date of vacancy of April 30, 2023. The reason for issuing it states: Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On November 29, 2022 it was determined that a cat was living in the rental unit and a letter was sent to the tenant that day which advised that the tenant had 48 hours to remove the cat. The tenant said the cat belonged to his sister and would be gone within 24 hours. The landlord's agent inspected the rental unit within 2 days and the cat was gone. However, on March 3, 2023 the landlord's agent was in the hallway and heard a cat meowing through the tenant's door. The Notice to end the tenancy was issued on March 6.

A few days went by and on March 10, 2023 the landlord received a note from the tenant's physician, dated well after the cat first appeared on the property, and well after the Notice to end the tenancy was served. The landlord's agents reviewed the note and took steps to determine if the tenant had any right to have a cat based on the reasoning in the physician's letter, and noted that the Guide Dog and Service Act does not apply to tenancies with shared accommodation. There are no circumstances under which a cat should be allowed, and the tenant was informed that the request was declined.

The tenant testified that he spoke to another agent of the landlord, and due to the tenant's mental health, the tenant would be able to keep the cat if the tenant was to emotionally certify the cat by the tenant's physician. The tenant went to the doctor, who wrote the letter that the cat is a certified support animal, and failure to keep the cat could be fatal. Following that, the other agent of the landlord said that with the

certification, the tenant and the cat could stay, and the tenant told the landlord's agent at that time that the cat came back. However, after the tenant provided the evidence that the landlord's agent asked for, the Notice to end the tenancy was given anyway.

The tenant had taken the cat back to his sister, however after the tenant tried to take his own life, the tenant's sister returned the cat. The tenant did what was required by providing the physician's note to the landlord, and then this agent of the landlord got involved and gave the Notice to end the tenancy.

SUBMISSIONS OF THE TENANT'S LEGAL COUNSEL:

Referring to Residential Tenancy Policy Guideline 8, in order to end the tenancy for breach of material terms, the notification of the breach must be in writing, must be an allegation of a problem, that it is a material breach, and if the problem continues a notice to end the tenancy would be issued. In this case, the tenant fixed the breach within 24 hours and testified that his mental health was severely impacted. The landlord's agent contends that the tenant ought to have received the permission in writing, however given the tenant's condition and ability to keep living was severely affected. The tenant talked to another agent of the landlord, who said that if the tenant obtained the certification from his physician, the tenant could keep the cat. There is no testimony from that agent of the landlord to the contrary, and the weight should be given to the tenant who was given permission to keep the cat.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The letter to the tenant was extremely clear, that it was against the rules but in the tenant's own words, the tenant knew the cat was not supposed to be there, and knew the severity. No one of the landlord's agents would enter into a verbal contract. The landlord's agents have 550 units and at no time would anyone use a verbal contract. It is outrageous for the tenant to say he had permission to have a cat.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the One Month Notice to End Tenancy for Cause provided by the tenant, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

To end a tenancy agreement for breach of a material term the party alleging a breach 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.

In this case, the landlord's agent did not testify that the letter indicated that if the cat had not been removed by the deadline, the landlord would end the tenancy, which is crucial. In the absence of a copy of the letter, I cannot be satisfied that the landlord has established that the One Month Notice to End Tenancy for Cause was issued in accordance with the Act, and I cancel it. I make no orders with respect to whether or not the tenant may keep the cat.

The tenant's application also seeks an order that the landlord comply with the *Act*, regulation or tenancy agreement, however it is not clear what the tenant seeks. I have no jurisdiction to make any orders under the Guide Dog Service Act, and I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order to the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated March 6, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that

the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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 25, 2023

Residential Tenancy Branch