



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call on July 19, 2023, having been adjourned from July 13, 2023, concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy for Cause.

The tenant and the landlord attended the hearing, and the landlord was accompanied by the landlord's spouse and Legal Counsel. The landlord and the landlord's spouse and the tenant each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

During the first day of the hearing, there were issues with evidence being exchanged, and I ordered the parties to re-serve all evidence again, and the parties agreed to the exchange by email.

On July 19, 2023 no issues with respect to service or delivery of documents were raised, and all evidence provided 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 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$2,500.00 is payable on the 1st day of each month 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 \$1,250.00 which is still held in trust by the landlord. A copy of the tenancy agreement has been provided for this hearing which indicates a pet damage deposit in the amount of \$600.00 by March 1, 2020, however the landlord did not collect it because the tenant did not keep his cat. The rental unit is a single family house.

The landlord further testified that one of the people that the tenant wanted to sublet a room to had a dog. The landlord had met the dog prior and knew the person and knew the dog was a good dog. The sub-tenant promised to not let the dog run on the property and to pick up feces, and the landlord agreed. An Addendum was made to the tenancy agreement to permit that dog.

Previously, no dogs were allowed because the landlord has a veterinarian business on the property and clients arrive all the time with dogs, and there had been problems in the past with dogs running around.

At the end of January, 2022 the landlord received an e-transfer with a note from the tenant indicating that the dog was gone and the sub-let was finished. The parties had a verbal understanding, in conversations, that no other dogs would be allowed. In January, 2023 there were no discussions about other dogs being allowed on the property, however the landlord learned of another dog on the property after receiving a voice mail from a neighbour that the dog was on her property which caused damage. A transcript of the voice mail has been provided as evidence for this hearing. The neighbour was very distressed because the dog killed a bunch of her chickens, which had happened the month before as well. The landlord called the neighbour back and then called the tenant advising what had happened.

Neighbours were not happy, and the landlord needed the dogs to be gone, which took about a week. The tenant said he would ensure the dog left the property, but was leaving for the airport. The landlord talked to the other person and said that the dog had to leave. However, the dog was not removed; the neighbour told the landlord that dogs were still there.

The neighbour has provided a copy of a letter, which states that 2 dogs were on her property about a month apart, who killed her chickens, who are egg producers and she was obviously very upset, but did not request reimbursement from the landlord, but from the tenant. The neighbour gave the landlord a receipt for \$744.339 for her costs. The landlord talked to the neighbour and to the landlord's lawyer about what the chickens are worth, and more for future egg production, and figured that 10 chickens and loss of an incubator, and the tenant was asked for the money. The landlord wrote a letter to

the tenant about that, and the landlord's lawyer wrote a letter which accompanied a notice to end the tenancy.

It happened twice, so the landlord and the neighbour are very concerned it will happen again. The landlord has to maintain relationships with neighbours. The person who had the dog went to the neighbour and apologized, and apologized again in writing, a copy of which has been provided for this hearing. The tenant didn't take responsibility or pay any compensation and the landlord does not trust that this won't happen again.

On March 31, 2023 the landlord served the tenant with a One Month Notice to End Tenancy for Cause by placing it in the mailbox, and a copy has been provided for this hearing. It is dated March 30, 2023 and contains an effective date of vacancy of May 1, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The neighbour who lost the chickens does not reside on the rental property, but across the street. The landlord stated that he is looking at law suits with the neighbours. The written notice regarding breach of a material term was done by text message, and verbally. On February 4, 2023 the landlord's spouse texted the tenant because the dog was still seen on the property.

The landlord's spouse testified that having been involved in discussions about a dog on the property, she was concerned, but knew the dog to be a relatively dog and knew the person staying with the tenant. The landlord's spouse knew from the e-transfer in January, 2022 that the dog had left. There were no discussions, nor did the landlord's spouse know about other dogs on the property until the second chicken attack happened. However, the landlord's spouse connected with the tenant by telephone and mentioned that the neighbours had advised that the dog was still there and had not been removed when asked to, and mentioned the risk of killing more chickens, and no one had even asked or told the landlords. The landlord's spouse told the tenant that the dog needed to be removed that day, and the landlord was concerned about a law suit. The tenant replied,

“They’re just chickens, how much are they worth?” The dog was still there 3 days later, but then no longer seen.

The neighbour was very concerned; to them it’s their livelihood and they value their chickens as pets, and lost their trust.

The tenant testified that there will be no dogs, and is sorry about what happened.

The fellow with the first dog moved out. The tenant’s second roommate was looking after a dog and had no place to take it. The tenant wasn’t sure if the second dog would be allowed. The tenant didn’t know that the roommate had made the commitment, and it was only for a week so the tenant didn’t expect any problems.

The tenant went to the neighbour’s house with the owner of the second dog and offered to pay for damages, but they said they would deal with reimbursement from the landlords, not the tenant. The tenant didn’t see a bill until it was attached to the lawyer’s letter with the Notice to end the tenancy.

SUBMISSIONS OF THE LANDLORD’S LEGAL COUNSEL:

The dog caused significant damage, and distress to an emotional state and to business on the property. The landlords communicated with the tenant, and the urgency was not met by the tenant to rectify it.

SUBMISSIONS OF THE TENANT:

The tenant does not have a dog and if anyone else moved in, the tenant wouldn’t allow dogs. It wasn’t the roommate’s dog and he couldn’t figure out what to do with the dog.

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.

I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

To end a tenancy for significant interference or unreasonable disturbance, the landlord must establish that another occupant of the rental property, or the landlord, has been disturbed, not a neighbour across the street. The landlord testified that the neighbour

was distressed and that the landlord is concerned it will happen again. The landlord also testified that the incidents may have an impact on maintaining relationships with neighbours. However, I cannot make a finding that the landlord has suffered a significant interference or unreasonable disturbance; the landlord didn't even know the dog was on the property until alerted by the neighbour.

I see no evidence that the landlord's property has been put at significant risk, or that the tenant or roommate caused any extraordinary damage to the rental unit or property.

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 did not give any written indications about a breach, only oral conversations and text messages that do not contain the elements above.

Considering the evidence and testimony of the parties, I am not satisfied that the landlord has established any of the reasons for ending the tenancy. Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

Since the tenant has been successful with the application the tenant is also entitled to recover the \$100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant 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 30, 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 Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant may reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: July 24, 2023

Residential Tenancy Branch