



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on September 22, 2023 concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause, and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding (the Hearing Package) by registered mail to the the address of the landlord indicated on a One Month Notice to End Tenancy For Cause, on June 2, 2023 and has provided a copy of a Canada Post cash register receipt containing a tracking number dated June 2, 2023. I accept that, and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Has the One Month Notice to End Tenancy For Cause been issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 1, 1997 and the tenant still resides in the rental unit. Rent in the amount of \$565.00 was originally payable on the 1st day of each month, which has been increased over time and is now

\$903.00 per month, including a parking fee. On August 1, 1997 the tenant paid a security deposit to the landlord in the amount of \$282.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in an apartment building. A copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that on May 26, 2023 the tenant found a One Month Notice to End Tenancy For Cause taped to the door of the rental unit. A copy has been provided for this hearing, and it is dated May 26, 2023 and contains an effective date of vacancy of June 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. It is signed by the landlord named in the tenant's application, who the tenant testified is the representative of the landlord through a Property Management company.

The tenancy agreement does not indicate that smoking inside the rental unit is prohibited, and the tenant testified that he's been smoking inside ever since he moved in. The tenant also received a notice taped to his door stating that smoking was not allowed. The tenant immediately called the Residential Tenancy Branch who said it was not applicable.

Analysis

Firstly, 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*. In this case, the landlord did not attend the hearing to testify and has not provided any evidentiary material. Therefore, I cancel the One Month Notice to End Tenancy For Cause, and the tenancy continues until it has ended in accordance with the law.

I have reviewed the tenancy agreement, made in 1997, and there is no indication that smoking is not allowed in the rental unit. A landlord may make a building a non-smoking building, but may not change a tenancy agreement without the express written consent of the tenant. Therefore, pursuant to my authority under Section 62 (3) of the *Act*, I order that the landlord comply with the tenancy agreement.

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 as against the landlord in that amount, and I order that the tenant may serve

the order upon the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division, or may reduce rent for a future month by that amount as full recovery.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy For Cause dated May 26, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I further order the landlord to comply with the tenancy agreement, which does not indicate that smoking inside the rental unit is prohibited.

I further 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.

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: September 22, 2023

Residential Tenancy Branch