

DECISION

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a one month notice to end tenancy for cause dated August 28, 2023 (the "One Month Notice") under section 47 of the Act;
- repairs to be made to the rental property under section 32(1) of the Act;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act;
- an order requiring the Landlord to comply with the Act, regulations, or tenancy agreement under section 62(3) of the Act; and
- authorization to recover the Tenant's filing fee under section 72(1) of the Act.

The Landlord applied for:

- an order of possession based on the One Month Notice under section 55 of the Act;
- an order of possession based on a fixed term tenancy agreement under section 55 of the Act;
- compensation for damage to the rental property under section 67 of the Act;
- compensation for monetary loss or other money owed under section 67 of the Act; and
- authorization to recover the Landlord's filing fee under section 72(1) of the Act.

The Tenant and the Landlord attended this hearing and gave affirmed testimony. Also in attendance was the Landlord's spouse SA.

Preliminary Matters

Service of Dispute Resolution Proceeding Package and Evidence

The Landlord confirmed receipt of the Tenant's notice of dispute resolution proceeding package. The Tenant did not submit any documentary evidence.

The Tenant confirmed receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence.

Severing of Unrelated Claims

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis added)

In this case, I find the most important issue in the parties' applications is whether this tenancy will be ending and whether an order of possession will be granted to the Landlord. I find the other claims in the parties' applications, except for claims to recover the filing fee, are unrelated. Therefore, I dismiss those unrelated claims with leave to re-apply. The parties are at liberty to make separate applications regarding those claims.

Issues to be Decided

Is the Tenant entitled to cancel the One Month Notice?

Is the Landlord entitled to an order of possession?

Are the parties entitled to recover their filing fees?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The rental unit initially consisted of two bedrooms on the upper level of a house. The parties later agreed to include a third room on the upper level as part of the rental. There is another bedroom downstairs which the Landlord rents separately to other tenants. The residents in the rental property have locks on their bedroom doors and share the kitchen and living room as common space.

The Tenant moved into the rental property with a co-tenant. They signed a tenancy agreement with the Landlord for a fixed term commencing on August 1, 2019 and ending on September 30, 2023. Rent was \$1,000.00 due on the first day of each month, or \$500.00 per person. A security deposit of \$500.00 was paid to the Landlord. The Landlord also collected a pet damage deposit of \$250.00, which has since been returned.

In or around February 2023, the co-tenant moved out of the rental property. Since then, the Tenant has continued to pay rent of \$1,000.00 per month to the Landlord. The Tenant found roommates to occupy the other rooms in the upper level.

The Landlord issued the One Month Notice to the Tenant on August 28, 2023 with an effective date of September 30, 2023. The stated reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The One Month Notice provides the following additional details (portions redacted for privacy):

The tenant was advised to remove the cat and dog in the house but he will not do. [Tenant] said it is his mental therapy (*sic*).

[Tenant] has sublet the rental unit. [Tenant] move out my renter out of his room, he paid the rent.

Tenancy will end Sep. 30/23

The Tenant received a copy of the One Month Notice on August 28, 2023 and submitted his application on September 7, 2023.

On August 18, 2023, the Landlord had given the Tenant a warning letter (the "Warning Letter"), which states:

I have informed you many times that that animals are not allowed in this house. The cat came first for trail basis it is very dirty hair all over the house and

noisy not spade female cat. Now you brought a dog. The smell of the animals cat and dog the urine and droppings and poo. are not acceptable.

You and your animals already occupied the living room other tenant can not use, because very dirty and allergy to dusty hair and smell. The cat is not spade. The dog has a rabies. Any one your dog bite you the dog owner are responsible for hospitalization. You do not clean after your animals

You have to remove your animals within 7 days. if you fail to do eviction will follow. You breach the tenancy agreement. (*sic*)

The Landlord gave verbal testimony confirming the situation with the Tenant's pets as described in the Warning Letter. According to the Landlord, the Tenant had refused to remove the pets because they were for the Tenant's mental therapy. The Landlord argued that the Tenant was in breach of the tenancy agreement.

The Landlord also argued that the Tenant had sublet the rental unit by allowing a tenant to move into one of the rooms. The Landlord testified that the Tenant had changed the front door lock and was smoking inside the house. The Landlord seeks to end this tenancy and to obtain an order of possession. The Landlord is agreeable to give the Tenant until the end of February 2024 to find another place.

The Tenant testified as follows:

- The tenancy agreement mentioned the Tenant's cat and it was not temporary. It was not stated on the tenancy agreement that the Tenant had to remove his cat. The Landlord returned the \$250.00 pet damage deposit to the Tenant in the fall of 2020.
- The Tenant had not previously heard about other tenants having allergies to his pets. The other tenants have liked the Tenant's pets. The Tenant's roommate moved out because he was accepted into housing that he had been on a waiting list for, not because he disliked the Tenant's cat. The Tenant's cat and dog were not very dirty and would go outside to do their business. The Tenant got the dog in May 2023. The dog passed away about a week prior to this hearing.
- When his co-tenant moved out, the Tenant took over the other room. The Tenant pays full rent for this room as well, which the Landlord accepted. The Tenant did not remove a paid tenant from the Landlord. The Tenant did not "sublet" because the Tenant did not let someone else move in while the Tenant was not here.
- Some of the reasons stated on the One Month Notice do not make sense, as the Tenant never worked for the Landlord.
- The Tenant smokes outside the property, not inside. Other tenants would smoke inside the property or in the doorway. There was an issue with the front door not locking. The Tenant ended up getting a security system and a deadbolt with an access code, which the Landlord has.

Analysis

Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 of the Act.

I find the Tenant received the One Month Notice on August 28, 2023 and submitted the Tenant's application on September 7, 2023. I find the Tenant's application was made within the 10-day deadline under section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

The reasons for ending the tenancy provided in the One Month Notice correspond to circumstances described in sections 47(1)(a), (d)(i), (d)(ii), (h), and (i) of the Act.

I note the One Month Notice also includes a reason for end of employment under section 48(1) of the Act. However, I do not find this reason to be applicable because I find it is undisputed that the Tenant has not been employed by the Landlord as a caretaker, manager, or superintendent of the property.

In this case, I find the Landlord has established cause for ending this tenancy under section 47(1)(h) of the Act, for breach of a material term that was not corrected by the Tenant within a reasonable time after written notice. Therefore, I do not find it is necessary to address all of the other causes stated on the One Month Notice.

Under section 47(1)(h) of the Act, a landlord may issue a one month notice to end tenancy for cause if the tenant (i) has failed to comply with a material term, and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I find section 4 of the parties' tenancy agreement states: "No animals or pets of any description shall be harboured in the premises or on the property without the written consent of the landlord." Underneath this section is a handwritten note which says "ONE BLACK CAT". I do not find the tenancy agreement to state that the Tenant's cat was permitted only on a trial basis. Therefore, I find the parties had agreed that there would be no animals or pets without the written consent of the Landlord except for the Tenant's cat.

As stated in Residential Tenancy Policy Guideline 28, the question of whether or not a pets clause is a material term of the tenancy agreement will depend upon what the parties intended to be the consequence of a breach of the clause. The tenancy agreement itself may designate the pets clause to be a "material term". While that is an important indication, it is not always conclusive.

According to Residential Tenancy Policy Guideline 8, a "material term" is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

I find that on page 2 of the tenancy agreement, it states that "a breach of any of the provisions of the conditions listed below [including section 4] shall constitute a breach of a material convent of the tenancy agreement." Considering this language, the language of section 4 itself, and the placement of this section among other important sections of the agreement, which for example relate to payment of rent on time (section 1), repair of damage caused by a tenant (section 2), unreasonable noise or disturbance (section 3), as well as structural alterations (section 5), I am satisfied that section 4 is a material term of the parties' tenancy agreement for which a breach may lead to the termination of the agreement.

Furthermore, I find the rental property is shared between the Tenant and other tenants, including tenants in the downstairs bedroom which are separately placed by the Landlord. Under these circumstances, I find that the restriction of pets and the ability for the Landlord to vet and approve pets in advance is important to the overall scheme of the tenancy agreement.

I find the Tenant acquired a dog in May 2023 without first obtaining the Landlord's written consent. I find there is insufficient evidence to show that the Tenant's dog was registered under the *Guide Dog and Service Dog Act*. I find that by keeping the dog at the rental property without the Landlord's written permission, the Tenant breached section 4, a material term of the tenancy agreement.

I find it is undisputed that the Tenant received the Landlord's Warning Letter on August 18, 2023, which required the Tenant to remove the dog within 7 days. I find it is undisputed that the Tenant continued to keep the dog at the rental unit for several more

months until the dog passed away about a week before the hearing. Therefore, I find the Tenant did not correct a material breach of the tenancy agreement within a reasonable time after receiving written notice from the Landlord to do so.

Accordingly, I dismiss the Tenant's claim to cancel the One Month Notice without leave to re-apply.

Is the Landlord entitled to an order of possession?

Under section 55(1) of the Act, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 of the Act in form and content, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with the requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the One Month Notice, I find the Landlord is entitled to an order of possession under section 55(1) of the Act. I do not find it is necessary to consider whether the Landlord is entitled to an order of possession on the other ground raised by the Landlord.

The effective date of the One Month Notice has already passed. As noted in Residential Tenancy Policy Guideline 54, effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may extend the effective date beyond the usual two days provided.

I find the Landlord agrees to give the Tenant until the end of February 2024 to vacate the rental unit. Therefore, I grant the Landlord an order of possession effective 1:00 pm on February 29, 2024.

Are the parties entitled to recover their filing fees?

Since the One Month Notice has been upheld, I find the Landlord is entitled to recover the filing fee for the Landlord's application under section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to deduct \$100.00 from the security deposit held by the Landlord in full satisfaction of the filing fee. The Tenant's claim to recover the Tenant's filing fee is dismissed without leave to re-apply.

Conclusion

The Tenant's claims to cancel the One Month Notice and recover the Tenant's filing fee are dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm** on **February 29, 2024**. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord's claim for recovery of the Landlord's filing fee is granted. The Landlord is authorized to retain \$100.00 from the Tenant's security deposit.

The remaining claims made by the parties are dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation period.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 10, 2024

Residential Tenancy Branch