



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, OPC-DR, FFL

Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenants on January 26, 2024, and an Application filed by the Landlord on February 5, 2024.

The Tenant applied:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord applied:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord C.H.L. was served on January 27, 2024, in-person in accordance with section 89(1) of the Act.

I find that Tenant T.M. and Tenant N.B. were served on February 6, 2024, by registered mail in accordance with section 89(1) of the Act. Copies of the tracking numbers were submitted by the Landlord as evidence.

Service of Evidence

Based on the submissions before me, I find that the Tenants' evidence was served to the Landlord in accordance with section 88 of the Act but not in accordance with the *Residential Tenancy Branch Rules of Procedure* section **3.3 Evidence for Cross-Application for Dispute Resolution Evidence** which states that evidence supporting a cross-application must:

- be submitted at the same time as the application is submitted, or within three days of submitting an Online Application for Dispute Resolution;
- be served on the other party at the same time as the Notice of Dispute Resolution Proceeding Package for the cross-application is served; and
- **be received by the other party** and the Residential Tenancy Branch directly or through a Service BC Office **not less than 14 days before the hearing**.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

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.

Evidence was provided showing that this tenancy began on June 15, 2015, with a monthly rent of \$850.00, due on first day of the month, with a security deposit in the amount of \$425.00 and a pet deposit in the amount of \$437.00.

According to Landlord representative K.T., a One Month Notice was served to the Tenant's in-person on January 22, 2024, because the Tenants or a person permitted on the property by the Tenants had:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord

- tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The details on the notice describing the reason for the notice are as follows:

“Breach of material terms on the signed lease including:

Section 17 – CONDUCT: Tenant’s behaviour is out of control, resorting to verbal & physical assault of Cyclone employees, including, but not limited to the Landlord’s agents.

Section 18 – PETS: Tenants refuse to follow lease terms by keeping more than the single animal agreed upon at the time of written approval on October 31, 2016.

Section 26 – OUTSIDE: Tenant refuses to remove flag from window, after many verbal & written requests/ reminders from the landlord, for the use of white-backed curtains only.”

According to Landlord representative K.T., Tenant N.B. is out of control. She testified that she had gone to the unit to conduct a planned inspection on January 4, 2024, to see if there were any additional cats in the unit and that during the inspection Tenant N.B. yelled at her, blocked her from entering a bedroom and pushed past her. She stated that while he did not touch her, he did yell in her face and push up on her which made her very uncomfortable. She stated that he has never actually threatened her or any other staff or residents but since the January 4, 2024, incident she now takes the building’s side door. Copies of an incident report and caution notice were submitted by the Landlord as evidence. A copy of an audio recording allegedly recorded during the January 4, 2024, inspection in which an upset and angry male voice can be heard asking why his home was being illegally entered to look for cats while the issue regarding unrepaired pipes is being ignored.

She stated that Tenant N.B. frequently complains to staff about noise coming out of the boiler room and sometimes makes videos of staff in public places inside and outside the building for unknown reasons. She stated that he has also yelled at staff. Copies of staff logs were submitted including logs in which Tenant N.B. is alleged to have been yelling and swearing outside of the office and making false statements about the Landlord as well as a November 21, 2023, caution notice to the Tenants.

According to Landlord representative K.T., the Tenants are only allowed one cat in the unit but currently have four. She stated that the Tenants were asked on September 27, 2023, to reduce the number of cats to two but the Tenants refused. She stated they were unable to verify if there was more than one cat as the Tenants ended the

inspection on January 4, 2024, before they could inspect the entire unit. Copies of a pet addendum and caution notices dated August 31 and September 27, 2023, regarding the number of pets in the unit were submitted as evidence.

According to Tenant N.B., they have never had four cats in the unit. He stated that they currently have 2 cats and a small dog but were never given a limit as to how many pets they could have.

Tenant N.B. testified that he has had his Canadian flag in the window since June 15, 2015 and that the Landlord never started taking an issue with it until about a year and a half ago. A copy of a November 7, 2023, letter from the Landlord requesting that the Tenants remove the flag from the window was submitted as evidence.

Tenant N.B. testified that Landlord representative K.T. attended their apartment along with the maintenance person on January 4, 2024, without prior notice or specified reason. He testified that when he objected to the inspection, K.T. pushed them out of the way and barged in. He stated that she started going through their personal items and grabbing things. He stated that she was asking them about cats and the flag in the window and blocked them from leaving the room while questioning them. He stated that K.T. was the one using her body to push them around rather than him using his to push her.

Analysis

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenants disputed this notice on January 26, 2024, and since I have found that the One Month Notice was served to the Tenants on January 22, 2024, I find that the Tenants have applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenants and obtain an end to this tenancy.

I find that the Landlord did not provide witnesses at the hearing to testify to the claims made against the Tenants regarding the January 4, 2024, incident and that the Landlord's testimony was directly disputed by the Tenants and that each party had equally credible accounts of the events that occurred that day. I further find that, while the Tenant may have raised his voice and used strong language to express his frustration during the January 4, 2024, inspection incident, Tenant N.B. did not threaten or assault Landlord representative K.T. or any other staff members at that time or any other time during the tenancy as alleged on the notice. I further find that the logs kept by staff do not support a finding that Tenant N.B. ever threatened or assaulted Landlord staff or otherwise engaged in illegal activity.

A material term is an integral part of a contract, such that if the term is breached, it's not possible for the contract to be fulfilled. I find that, while the Tenants are in breach of two terms of the tenancy agreement and associated addendum regarding the number of pets allowed in the unit and the type of material that may be hung in the window, these breaches do not constitute breaches of a material term as they do not affect the basic terms of the tenancy agreement as, for example, would be the case for nonpayment of rent. I find that the Landlord's lack of enforcement of these terms over the course of the tenancy, aside from the recent issuance of cautionary notices, further supports this finding. I find that, while the Landlord may not have explicitly waived their right to enforce these terms, their lack of enforcement of them for a significant period of the tenancy could be reasonably interpreted by the Tenants as acceptance of additional pets and noncompliant window displays leading them therefore to conclude that they were not in breach of the agreement, the Landlord's caution notices notwithstanding.

I caution the Tenants, however, that if they continue to breach these terms of the signed tenancy agreement, despite the Landlord's requests for them to comply and with a full understanding of the Landlord's recently expressed position that they did not and do not agree to additional pets or noncompliant window hangings, the Landlord may serve a new notice to end tenancy.

Therefore, the Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of January 22, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

This issue was not heard.

For the above reasons, the Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is

dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

The One Month Notice of January 22, 2024, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, with leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is dismissed, without leave to reapply.

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: March 25, 2024

Residential Tenancy Branch