

## **DECISION**

### **Introduction**

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

The Tenants applied for:

- cancellation of a one month notice to end tenancy for cause dated January 30, 2025 (the "One Month Notice") under section 47 of the Act;
- an order restricting entry into the rental unit under section 70(1) of the Act;
- a rent reduction of \$480.00 under section 65(1)(f) of the Act;
- an order for repairs to the rental unit under sections 32(1) and 62(3) of the Act;
- an order to provide services or facilities under section 27 of the Act;
- orders to comply with the Act, regulations, or tenancy agreement under section 62(3) of the Act; and
- authorization to recover the Tenants' filing fees under section 72 of the Act.

The Tenants attended this hearing and were assisted by an interpreter, AS. ZC and ZC's assistant MC attended this hearing on behalf of the Landlords. All attendees who gave testimony did so under oath.

### **Preliminary Matters**

#### **Service of Evidence**

This hearing was scheduled following a case facilitation meeting attended by the parties. The parties confirmed receipt of each other's evidence.

#### **Addition of Corporate Landlord APL**

The Tenants' applications initially named ZC as the sole landlord and respondent. ZC explained that the landlord is APL, and that she is the building manager contracted by APL. The parties agreed that APL may be added as a second landlord and respondent. Therefore, by consent of the parties and pursuant to section 64(3)(c) of the Act, I have amended the Tenants' applications to add APL.

## **Severing Unrelated Claims**

Under Rule 6.2 of the Rules of Procedure, if a party has applied to cancel a notice to end tenancy, 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 re-apply.

In this case, I find the most important issue that must be adjudicated is whether or not this tenancy will be ending pursuant to the One Month Notice. I find the other claims in the Tenants' applications to be largely unrelated to the Tenants' claim to dispute the One Month Notice.

During the hearing, there was only sufficient time for the parties to discuss the issues regarding the One Month Notice and the repairs sought by the Tenants. Therefore, aside from those two claims and the Tenants' claims to recover the filing fees, I have severed the remaining claims and I dismiss them with leave to re-apply.

## **Issues to be Decided**

Should the One Month Notice be cancelled?

Is the Landlord entitled to an order of possession?

Are the Tenants entitled to an order for repairs?

Are the Tenants entitled to the recovery of their filing fees?

## **Background and Evidence**

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

The rental unit is an apartment. This tenancy commenced on September 1, 2022. The rent is currently \$2,380.00 due on the first day of each month.

On January 30, 2025, the Landlords issued the One Month Notice to the Tenants. MC explained that the effective date of January 28, 2025 was a mistake and should have been February 28, 2025. The stated reason for ending the tenancy is "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." According to the details of cause, the Tenants have pets (birds) when prohibited, refuse entry to the Landlords, and are smoking in a non-smoking unit.

The Tenants confirmed receipt of a copy of the One Month Notice attached to their door on January 30, 2025. The Tenants made their application to dispute the notice on the same day.

### *The Landlords' Position*

The Landlords are seeking to end this tenancy due to the Tenants' unauthorized pets, smoking in the rental unit, and denying the Landlords access to the rental unit. The Landlords submit that the Tenants have breached clauses 18 (pets), 31 (entry), and 43 (smoking) in the tenancy agreement.

The Landlords received complaints about noise from the Tenants' pet birds. On December 9, 2024, the Landlords issued a warning letter to the Tenants and requested for the birds to be removed within 7 days.

On January 24, 2025, the Landlords issued the Tenants another warning about the pets, together with a request to inspect the rental unit on January 30, 2025 due to the breach. The Tenants refused entry on January 30, 2025 and threatened police action. The Landlords submitted recordings of the noises made by the birds, heard from outside the rental unit.

The Landlords have received ongoing complaints about smoking in the rental unit and on the Tenants' balcony since April 2023. The complaints come from the Tenants' next-door neighbour and other anonymous tenants. The rental unit was also noted to be smelling like cigarette smoke when the Landlords had workers in there for repairs.

The Tenants gave the Landlords a letter for repairs dated December 16, 2024, in response to the Landlords' warning letter about pets. The laundry vent issue was already repaired on July 9, 2024, after a few attempts to get access were denied by the Tenants. The laundry machine and dishwasher machine were present in the unit when the building was purchased. The Landlords are unaware of any confirmation by the municipality, but can remove the machines if required. The Landlords had balcony door insulation added prior to the laundry vent repair. The floors in the rental unit are creaky due to the age of the building, which is to be expected in an older building.

### *The Tenants' Position*

The Tenants acquired two pet birds in the beginning of December 2024. The tenancy agreement does not say that the Tenants cannot have birds, only no cats or dogs. The birds are caged and do not cause damage to the property. The Tenants asked for permission to have a cat about a year and a half ago, but that was denied by the Landlords.

Tenant SD smokes but not inside the rental unit. SD is away from home for many hours each day due to work. SD only smokes outside on his way to and from his car, which is parked about 5 minutes away. The building faces a back alley and homeless people come to the back of the building. It is possible to smell smoke and weed if the windows are open.

The rental unit has serious unresolved issues. The laundry dryer vent is not connected to any proper outlet. It has a plastic cover that does nothing, releasing heat, humidity, and lint into the unit. The laundry, dryer, and dishwasher were installed illegally. The balcony door has a large gap, letting in cold air and insects. The flooring produces excessive noise, disrupting daily life. Prior to the Tenants' letter dated December 16, 2024, the Tenants had verbally asked for repairs in November 2024. The Landlords issued the One Month Notice as retaliation for the Tenants' complaints.

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Should the One Month Notice be cancelled?**

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant.

I find the One Month Notice complies with the requirements of section 52 of the Act in form and content. I find the incorrect effective date is automatically corrected to February 28, 2025 under sections 47(2) and 53(2) of the Act. I find the Tenants made this application to dispute the One Month Notice within the time limit required under section 47(4) of the Act.

When a tenant applies to dispute a landlord's notice to end a tenancy, 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.

Section 47(1)(h) of the Act allows a landlord to end a tenancy by giving a one month notice 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.

Residential Tenancy Policy Guideline 8. Unconscionable, Unlawful, and Material Terms defines a "material term" as 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.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another.

Before serving a notice to end tenancy for breach of a material term, the party alleging the breach must first let the other party know in writing of the alleged breach and give them a reasonable opportunity to fix the problem. The written

notice of the alleged breach should inform the other party that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.

In this case, clause 18 of the parties' tenancy agreement states:

Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile, or exotic animal, domestic or wild, fur bearing or otherwise. Where the landlord has given his permission in advance in writing, the tenant must ensure that the pet does not disturb any person in the residential property or neighbouring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping the pet. This is a material term of this Agreement. If any damage occurs caused by the pet, the tenant will be liable for such damage and will compensate the landlord for damages, expenses, legal fees, and/or any reasonable costs incurred by the landlord. Further, if the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has a right to end the tenancy along with making the appropriate claims against the tenant. Having regard to the potential safety issues, noise factors, health requirements, and mess, the tenant will not encourage or feed wild birds or animals at or near the residential property.

Any term in this tenancy agreement that prohibits or restricts the size of a pet, or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the *Guide Animal Act*.

Based on the wording of clause 18, and given that the rental unit is located in a multi-unit building shared with other tenants, I am satisfied that the requirement for the Landlords' written permission prior to the Tenants keeping any animal on the property is a material term of the parties' tenancy agreement.

I find the wording of clause 18 specifically contemplates that this clause is a material term, and that failure to correct a breach within a reasonable period could give the Landlords the right to end the tenancy. I find this is supported by the important need to consider the impact of any potential animal on other tenants, including with regards to matters of health, safety, cleanliness, and risk of disturbances.

I find the Tenants breached clause 18 by keeping pet birds without first obtaining written permission from the Landlords. I note I find the wording of clause 18 to include birds, because it states “any animal”. I do not find the evidence to suggest that the pet birds require special consideration under the *Guide Animal Act*.

I find the Landlords issued a warning letter to the Tenants on December 9, 2024. I find this letter clearly informed the Tenants that they had violated the terms of their lease by keeping pets without prior written permission. I find the Landlords gave the Tenants 7 days to make arrangements to remove the birds. I find the Landlords also clearly warned that failure to comply may result in further action, including termination of the Tenants’ lease agreement.

I find the Landlords reminded the Tenants again in writing on January 24, 2025 that they were in violation of the tenancy agreement due to pets, and that continued non-compliance could lead to the termination of the tenancy agreement.

I find it is regrettable that the Tenants indicated they would be willing to rehome the birds, but had not done so by the date of this hearing. I note the Landlords’ position that they were not willing to give the Tenants a further extension. I find the Tenants have had over three months to comply with the Landlords’ warnings since the first warning on December 9, 2024. I find this to be more than a reasonable amount of time to rehome the birds. Therefore, I find the Tenants to have failed to correct the breach within a reasonable time after the Landlords gave the Tenants written notice to do so.

I conclude that the Landlords have established cause for ending this tenancy under section 47(1)(h) of the Act. Accordingly, I dismiss the Tenants’ claim to dispute the One Month Notice without leave to re-apply.

### **Is the Landlord entitled to an order of possession?**

Section 55(1) of the Act states that 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:

- the landlord’s notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant’s application or upholds the landlord’s notice.

Having found the One Month Notice to comply with requirements of section 52 of the Act and having dismissed the Tenants’ claim to cancel the One Month Notice, I find the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

The corrected effective date of the One Month Notice has already passed. In these circumstances, effective dates for orders of possession have generally been set for 7 days after the order is served. Considering that the Tenants have paid rent to the end of

this month, and by consent of the Landlords, I grant an Order of Possession to the Landlords effective 1:00 pm on March 31, 2025.

### **Are the Tenants entitled to an order for repairs?**

I find the issue of repairs to be moot since I have determined that this tenancy is ending. Therefore, I dismiss the Tenants' claim for repairs without leave to re-apply. I note the Tenants are still at liberty to re-apply for a rent reduction in relation to the repairs that they were seeking, and I have not made any findings on the merits of that claim.

### **Are the Tenants entitled to the recovery of their filing fees?**

The Tenants have not been successful in disputing the One Month Notice. As such, I do not find that the Tenants are entitled to recover their filing fees from the Landlords under section 72(1) of the Act.

### **Conclusion**

The Tenants' claim to cancel the One Month Notice is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **1:00 pm on March 31, 2025**. The Tenants must be served with this Order as soon as possible. Should the Tenants or any occupant 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 Tenants' claims for repairs and to recover the filing fees are dismissed without leave to re-apply.

The remaining claims in the Tenants' applications are severed and dismissed with leave to re-apply. Should any of the severed claims remain applicable, the Tenants are at liberty to make another application to address those claims. Leave to re-apply is not an extension of any applicable time limit.

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: March 21, 2025

---

Residential Tenancy Branch