



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) confirmed receipt of the tenants' notice of hearing package and the two submitted documentary evidence. The tenants have confirmed receipt of the landlord's submitted documentary evidence. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset the tenants confirmed that there were not seeking any orders for the landlord to comply with the Act, regulations or tenancy agreement. As such, this portion of the application was cancelled by the tenants.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?
Are the tenants entitled to recovery of their filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 15, 2016 on a fixed term tenancy ending on November 15, 2017 as per the submitted copy of the signed tenancy agreement. The monthly rent is \$1,400.00 payable on the 1st day of each month. A security deposit of \$350.00 and a pet damage deposit of \$350.00 were paid on October 29, 2016.

The landlord stated that the tenants were served with a warning letter on May 1, 2017 regarding a breach of a material term of the signed tenancy agreement in which the tenants had a dog occupying the rental premises which was contrary to the signed addendum page, condition #7 states in part,

With respect to item #5- Pets, the landlord is aware that the tenant has 2 cats that will also reside in the dwelling. The tenant is not permitted to bring any additional pets into the dwelling. Should the landlord suspect, or if there is any evidence of additional pets in the dwelling, there will be cause for eviction...

On May 3, 2017, the landlord served the tenants with the 1 Month Notice dated May 2, 2017. The 1 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The 1 Month Notice also displays details of the cause as:

Please see attached documents.

Tenant has indicated that they intend to only temporarily rehome the dog and has given the Landlord reason to believe that the breach will not be corrected.

The landlord provided testimony that a dog was suspected as being on the property on April 1, 2017 due to observing dog feces in the backyard. The landlord has also provided copies of emails and text messages between the landlord and tenant where the tenant has acknowledged that a dog was brought home; that the dog was in the process of being certified as a service dog. The landlord has provided a copy of an

online ad dated May 2, 2017 placed by the tenants' seeking housing that states they have two cats and a dog.

The tenants provided affirmed testimony that a dog was present and that upon receiving the warning letter dated May 1, 2017 that the dog was removed within 48 hours.

The landlord argued that the tenants' dog was present after May 3, 2017. The landlord refers to a text message from the tenants dated May 12, 2017 in which the tenants acknowledged that they have had a dog present in the rental premises since "November" (the beginning of the tenancy) "He's been in the house since November so if he was going to do any damages they already would have been done". The landlord argued that the tenants' credibility is in question as the tenants have repeatedly provided misleading testimony that there was no dog present until they decided to bring home a "service dog" after the tenancy began. The landlord argued that the tenants' text messages contradict their direct testimony.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the evidence of both parties and find that the landlord has established that the tenants are in breach of a material term of the tenancy by having a dog on the rental premises contrary to condition #7 of the signed addendum to the tenancy agreement.

On the tenants' claim that the dog was removed after receiving the caution letter dated May 1, 2017, I find that the tenants' credibility is called into question as their direct testimony is contradicted by the landlord's claims and his submitted documentary evidence in the form of text/email messages between the landlord and the tenants. As such, I find that I prefer the evidence of the landlord over that of the tenants.

The 1 Month Notice dated May 2, 2017 is upheld. The tenants' application to cancel the 1 Month Notice dated May 2, 2017 is dismissed. Pursuant to Section 55 of the Act, the landlord is granted an order of possession to be effective on June 30, 2017 as per the 1 Month Notice.

Conclusion

The tenants' application is dismissed.

The landlord's 1 Month Notice is upheld. The landlord is granted an order of possession effective on June 30, 2017.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: June 16, 2017

Residential Tenancy Branch