



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRAFT PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on June 29, 2021, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause, served June 29, 2021, (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on October 29, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant D.B. called in on her own behalf. The Landlord was represented by A.Y., the Resident Manager, as well as S.B. the Assistant Manager.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord's Resident Manager testified as follows. She stated that the tenancy began February 1, 2019. The rental unit is a two bedroom unit; the Tenant has one room and her twin daughters share the other room.

In terms of the reasons for issuing the Notice, the Resident Manager testified as follows:

- The Tenant, and her daughters, give their fob to other persons including their boyfriends which poses a safety risk for all residents of the building.
- The Tenant's boyfriend moved into the rental unit on three separate occasions and then moved out three times when they broke up.
- The Tenant also parks an unlicensed vehicle in the parking area. This is contrary to paragraph 21 of the tenancy agreement which requires the vehicles must be insured. (The Resident Manager stated that she informed the Tenant of this, gave her a warning letter, and as of April 23, 2021 the Tenant has moved the vehicle).

- The Tenant and her daughters also park in the visitor parking.
- The Tenant's daughters smoke on the balcony contrary to the building's strict no smoking policy.
- The Tenant and her daughters bring dogs into the rental building despite the building's strict no pet policy.
- The Tenant's boyfriend is very aggressive and he accosts the Resident Manager. He also refuses to wear a mask in the rental building against Covid-19 protocols.
- After the Tenant was served with the Notice, the Tenant was very upset and began accosting other tenants in the building.

In response to the Landlord's claims the Tenant testified as follows.

In response to the Landlord's claim that they give the fob to others, the Tenant admitted that her daughters gave the fob to their boyfriends. She stated that approximately 8 months ago this was brought to her attention and she informed her daughters not to give the fob out. She confirmed that her daughters do not give their fob to anyone anymore.

In response to the Landlord's claim that her boyfriend moved into the rental unit, the Tenant stated that he occasionally stays over but he has his own primary residence and does not live with the Tenant.

In response to the Landlord's claim that the Tenant parked an unlicensed vehicle in the parking, the Tenant confirmed that when she was informed the vehicle needed to be insured the Tenant obtained storage insurance.

In terms of the visitor's parking, the Tenant stated that her daughters both park there because there is no place to park on the street or in the building. She stated that they work late hours and they park in the visitors parking for their safety.

In terms of smoking, the Tenant admitted that her daughters vape on the balcony. She stated that until the hearing she was not aware that the no smoking policy included vaping as she did not understand vaping to emit smoke.

In terms of the pet issue, the Tenant admitted that she has had a dog at the rental unit. She stated that when she and her daughter's father separated the family dog stayed with him. She further stated that this was very hard on her daughters as they missed their pet very much. She confirmed that on a few occasions when he has needed a pet

sitter the dog has come to the rental unit where the girls look after the dog. She conceded in the hearing that this was against the no pet policy and confirmed she would not allow the dog in the rental unit in the future.

Analysis

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. In this case the Landlord sought to end the tenancy for cause pursuant to section 47 of the *Act* which reads in part as follows:

Landlord's notice: cause

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (d)the tenant or a person permitted on the residential property by the tenant has
 - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii)put the landlord's property at significant risk;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i)has caused or is likely to cause damage to the landlord's property,
 - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h)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)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

Neither part submitted a copy of the Notice in evidence before me. As such, I was not able to confirm the reasons the Landlord sought to end this tenancy.

That said, both parties gave testimony with respect to the Notice which suggests the Landlord wished to end the tenancy on the basis of the Landlord's allegations the Tenant has allowed an unreasonable number of occupants (47(1)(c), the Tenant or her guests unreasonably disturb others (47(1)(d)(i), and breach of a material term of the tenancy agreement (47(1)(h)).

I accept the Tenant's testimony that her boyfriend has his own residence and does not live at the rental property; I note that even in the event I found he lived there, I would not find four persons to be an unreasonable number of occupants in a two bedroom unit.

The majority of the Landlord's testimony and evidence dealt with the Landlord's allegations that the Tenant and her daughters, have broken numerous rules at the rental property; namely, her daughters have given their fobs to their boyfriends; her daughters vape on the balcony; they have looked after the family dog contrary to the strict no pets policy; the Tenant had an unlicensed vehicle in the parking area for a period of time; the Tenant's daughters regularly park in the visitor's parking; and, the Tenant's boyfriend has been aggressive. As noted previously, many of the above issues have been resolved. It was undisputed that by April the Tenant had addressed the issues with respect to the unlicensed vehicle; as this was prior to the issuance of the Notice, I find it to be of no relevance to the issues before me. Further, the Tenant testified that her daughters no longer give their fobs to their boyfriends and ceased doing so immediately upon being informed this was an issue.

The remaining issues were discussed during the hearing and the Tenant gave firm assurances that she would comply with the Landlord's requests and ensure her daughters no longer park in the visitor's parking, no longer pet sit for their father or anyone else, and cease vaping on the balcony.

The Landlord's representatives failed to provide specific testimony as to their concerns with the Tenant's boyfriend. This leads me to conclude this issue was of minimal import to the Landlord.

As discussed during the hearing, the issues giving rise to the Notice appear, on their face, to be somewhat minor; however, cumulatively, they indicate the Tenant and her daughters may have a general lack of regard for the rules of the rental building. The constant enforcement of those rules also takes from the Resident Manager's time and energy, which is unacceptable in a multi unit dwelling.

The question before me is whether the Landlord had proven this tenancy should end for cause. While I have some concerns regarding the Tenant's willingness to abide by the rental building rules, I am not persuaded this is sufficient to end this tenancy. I am also optimistic the Tenant now understands the importance of complying. I say this as she has taken corrective action in the past and has informed her daughters of the need to abide. I am also persuaded by the genuineness of her testimony and submissions

regarding her willingness to comply with the building rules and ensure a successful tenancy.

I therefore grant the Tenant's request to cancel the Notice. As she has been successful in her claim, I also award her recovery of the filing fee. Pursuant to section 72 of the *Act*, I authorize her to withhold \$100.0 from her next months' rent payment as recover of the fee.

Conclusion

The Tenant's application is granted. The Notice is cancelled. The tenancy shall continue until ended in accordance with the *Act*. The Tenant may reduce her next months' rent by \$100.00 as recovery of the filing fee.

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: November 10, 2021

Residential Tenancy Branch