



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TOP VISION REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: **CNC, FFT**

Landlord: **OPC, FFL**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession for cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant and the landlord both attended the hearing. As both parties were present, service was confirmed. The parties each confirmed receipt of the applications and evidence. Based on the testimonies I find that each party was served with these materials as required under RTA sections 88 and 89.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an affirmation to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Should the landlord's notice to end tenancy for cause be upheld or cancelled?

Can either party recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on August 1, 2021 with rent set at \$3,500.00 per month, payable on the first day of each month. The landlord collected a security deposit and pet damage deposit totalling \$3,500.00 which he continues to hold. An addendum was attached to the tenancy agreement and clause 5 of the addendum states:

The rental unit shall be used and occupied by tenant exclusively as a private single family residence and neither the whole rental unit nor any part thereof shall be used at anytime during this agreement by tenant for carrying on any businesses professions or trades of any kind or for any purposes other than as private single family residence. Airbnb is a business and is not allowed.

The parties agree that the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting a copy to the fence by the entrance of the residence on July 5, 2023. The tenant acknowledges receiving it on that day and filed an application to dispute the notice on July 10th. The reason for ending the tenancy was because the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Under "details of cause" the landlord wrote:

1. The property inspection carried on April 11th, 2023 brought us attention to the tenant doing the short term lease at the property without the consent of the landlord. The first warning and demanding letter was served on April 12th, 2023 to ask the tenant stop doing the short term lease and delete all the information on the websites by April 21st., 2023;
2. The tenant still kept doing the short term lease, the second Warning and Demanding letter was service on June 9th, 2023 and requested tenant to stop doing the short term lease and delete all the information on the websites by June 16th., 2023;
3. The tenant still kept doing the short term lease, the third Warning and Demanding letter was service on June 20th, 2023 and requested tenant to stop

doing the short term lease and delete all the information on the websites by June 26th., 2023;

4. The tenant still kept doing the short term lease, the second Warning and Demanding letter was service on July 5th, 2023 and requested tenant to stop doing the short term lease and delete all the information on the websites by July 5th., 2023.

The landlord testified that despite the 3 warning letters, the tenant continued to advertise the rental unit on short term rental sites. The landlord notes that when serving each of the warning letters, provided as evidence for this hearing, the landlord gave the tenant printouts from the following websites: booking.com; tripadvisor; ibooked.ca; a-hotel.com; padmapper; canada247; priceline.com; and trivago. The websites list the rental unit as the address that was available for short term rentals, all under the same name, D***B&B.

The landlord pointed out that on the screenshot from booking.com dated July 3, 2023 there are guest reviews indicating the tenant continued to host guests in the rental unit throughout June 2023.

The tenant gave the following testimony. It was his daughter who initially advertised the rental unit as a short term accommodation on Airbnb however the listing on that website was shut down following the landlord's original warning letter. The listing on the other sites were "viral" and somehow the listings were transferred onto those other sites without his knowledge. His daughter has since moved out and only she has control over the listing. The tenant doesn't have any response as to why there reviews in June for the unit, as he has no control over what is happening. The tenant suggests there is another person using the name D***B&B and perhaps it is their listing, not his.

The tenant testified that the rental unit is one of two houses located on this 2 acre property. The representative of the landlord who signed the tenancy agreement with him verbally agreed that the "main house" could be split into two and the second unit in the house could be offered as an in-law suite to someone else.

The tenant points to a handwritten note next to clause 13 that states "*the tenant will set up suite for nail salon and will remove alteration to original when move out.*" (as written) The second house was allowed to be used as a nail salon and the tenant fixed it up to operate as such, however due to Covid, the salon had no business and the nail salon was never operational.

After his daughter moved out, he had no assistance in paying the rent, so he unilaterally allowed some of his coworkers to move in with him. The landlord would not approve them and now the only occupants of the rental unit are the tenant, his spouse and his son.

Analysis

The tenant acknowledges receiving the landlord's 1 Month Notice to End Tenancy for Cause on July 5, 2023 and filed his application to dispute it on July 10th, within the 10 days as allowed under section 47 of the Act. When a tenant files an application to dispute a landlord's notice to end tenancy, the landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

The reason for ending the tenancy was because the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The material term of the tenancy was clause 5 of the addendum:

The rental unit shall be used and occupied by tenant exclusively as a private single family residence and neither the whole rental unit nor any part thereof shall be used at anytime during this agreement by tenant for carrying on any businesses professions or trades of any kind or for any purposes other than as private single family residence. Airbnb is a business and is not allowed.


The tenant did not dispute receiving the landlord's written notices to discontinue using the rental unit for short term rentals. During the hearing, the tenant testified that he took down the advertisement on Airbnb after receiving the landlord's first notice since Airbnb was the only platform identified on the tenancy agreement addendum.

The landlord's original warning dated April 14, 2023 provided a date of April 21, 2023 to discontinue short-term leases, and reiterates clause 5 of the addendum to remind the tenant of the conditions of his tenancy. Despite this warning, the tenant was given 3 additional warnings to stop advertising the rental unit for short-term stays that I find went unheeded.

I reviewed the screenshots from the other platforms, from the 4th warning letter sent to the tenant on July 3, 2023; compared the address of the active listings to the address stated on the application for dispute resolution and I found them to be the same.

I find the evidence proves the tenant continued to accept short-term leases, despite the multiple warnings given to him. I find the testimonials from four (4) different clients who booked stays at the rental unit through booking.com in June of 2023 to be conclusive proof that the tenant continued to violate the terms of the tenancy agreement.
(reproduced below)

Guest reviews Sort reviews by: Newest first


Riccardo
 Italy

Apartment - Ground Floor
 4 nights - June 2023
 Couple

Reviewers' choice Reviewed: July 1, 2023

Exceptional


Il salotto con vetrata con vista sul giardino
 Qui abbiamo fatto le nostre colazioni

L'ingresso attraverso il garage

[Show translation](#)

Helpful Not helpful

10


M
 Germany

Apartment - Ground Floor
 3 nights - June 2023
 Solo traveler


Reviewed: June 23, 2023

Good

There are no comments available for this review

Helpful Not helpful

7.0


Dumont
 Canada

Apartment - Ground Floor
 1 night - June 2023
 Couple


Reviewed: June 17, 2023

Exceptional

The feeling of home is with you, and Manger is so heartfelt and pleasant. That is our second home

Helpful Not helpful

10


Grose
 United States of America

Apartment - Ground Floor
 1 night - June 2023
 Group

Reviewed: June 8, 2023

Quiet and secure

Perfect spot for the night. Secluded and quiet. Host was very friendly.

Nothing it was great. I don't know what else to say.

Helpful Not helpful

9.0

While the tenant argues that his daughter was responsible for maintaining the short-term rentals contract and that he had no control over the bookings; I find it was within reason that the tenant could have asked his daughter to cancel the contracts with the multiple online platforms. If she is capable of continuing to book clients using the platforms, it stands to reason she has the capability to cancel the agreements with the online platforms. The tenant was either complacent in allowing the bookings to continue through his daughter or was wilfully blind and continued to benefit from the revenue that the short term rentals was bringing in.

I find the landlord has successfully proven that the tenant breached a material term of the tenancy agreement by using the rental unit for a purpose other than as a single family residence. The tenant was provided with written notice to correct this behaviour

and failed to comply with the notice. For this reason, the tenant's application seeking to cancel the notice to end tenancy is dismissed without leave to reapply.

When a tenant files an application to cancel a landlord's notice to end tenancy, and the application is dismissed, section 55 of the Act says the director must grant an Order of Possession to the landlord if the landlord's notice to end tenancy complies with section 52 (form and content of the notice to end tenancy).

I reviewed the landlord's notice to end tenancy and find it complies with the form and content provisions as set out in section 52. The Order of Possession is granted pursuant to section 55(1). As the effective date stated on the notice to end tenancy has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

The landlord's application was successful and the tenant's was not. As such, the landlord's filing fee of \$100.00 shall be recovered and the tenant's will not. In accordance with the offsetting provision of section 72, the landlord may retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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: October 26, 2023

Residential Tenancy Branch