



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a Notice to End Tenancy for cause issued by the Landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached a material term of the tenancy agreement and not corrected it within a reasonable time of written Notice to do so?

Background and Evidence

On August 8, 2008, the Landlord issued the Tenant a one month Notice to End the tenancy for cause. The effective date of the Notice is September 30, 2008. The cause alleged is that the Tenant had a pet cat in the rental unit in contravention of the written tenancy agreement.

The tenancy agreement contains a clause that pets are not allowed in the rental unit except with the written consent of the Landlord. According to the testimony and documents submitted, exceptions are made to this rule by the Landlord in cases where the pet is an "Aid Pet", such as a seeing/hearing aid dog.

The Landlord submitted in evidence several letters that allegedly were given to the Tenant. In July of 2005, a letter addressed "to all residents" was apparently sent to all occupants of the rental units. It explains the no pet clause contained in the tenancy agreement. In February of 2008, another letter addressed "to all residents" and setting out the same explanation of the pet clause was sent out.

On April 10, 2008, a letter was sent to the attention of the Tenant explaining a cat had been seen inside the rental unit and advised the Tenant this is considered a material breach of the tenancy agreement and warning the Tenant the pet had to be removed. The Tenant was warned that failure to remove the pet, "... can result in a Notice to End Tenancy being issued without further notice."

The Tenant sent an email explaining she had rescued a stray cat and asked for an exception to the rule and offered to pay a pet damage deposit. The Tenant and her advocate also testified at the hearing that the Tenant's children had become very fond of the cat.

The Agent for the Landlord replied to this email in a thoughtful and respectful manner, however, he advised he did not have the authority to make an exception. He cautioned the Tenant to, "... consider the consequences of this matter carefully ...". It is important to note that around this time the Tenant was also going through a marital breakup, which appears to have been very stressful to the family situation. The Tenant alleges she thought her former spouse was dealing with the pet problem and arranging a place for it.

On August 7, 2008, the Landlord sent the Tenant another letter restating that there was a no pets policy at the rental unit and requested an explanation for the, "... apparent breach."

On August 8, 2008, the Landlord issued a one month Notice to end tenancy, due to the alleged "apparent" material breach.

On August 11, 2008, the Tenant filed this Application and submits in her Application that the situation has been rectified, as the cat has been removed from the rental unit. In the course of the hearing the Tenant explained the cat was now at her former spouses' residence.

Analysis

Section 47(1)(h) of the Act allows the Landlord to end a tenancy if the Tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the Landlord gives written notice to do so.

Section 47(4) allows the Tenant to dispute a notice by making an Application for Dispute Resolution within 10 days of receiving the Notice. If the Tenant did not file within that timeframe, the Act conclusively presumes she has accepted the end of the tenancy.

Here the Tenant filed her Application to dispute the Notice on the first day she could after receiving the Notice, as a weekend intervened.

Furthermore, and most importantly, during the weekend and between the time she was given the Notice and the deadline to file her Application, the Tenant removed the pet from the rental unit. She acknowledged at the hearing that she may have breached the tenancy agreement by having the pet, however, she did rectify the breach of the agreement by removing the pet immediately following the Notice.

Based on the foregoing, and on a balance of probabilities, I find that the Tenant did breach her tenancy agreement with the Landlord, however, I also find she corrected the situation within a reasonable time after the Landlord gave her the Notice. In correcting the situation the Tenant has complied with the Act and is no longer in breach of the tenancy agreement.

Therefore, I find that the Tenant's Application should be allowed and I order that the Notice to End Tenancy dated August 8, 2008, is cancelled and set aside.

Nevertheless, I strongly caution the Tenant that she must never bring a pet back into the rental unit without the prior written consent of the Landlord to do so. I also find that as the Tenant waited until the last possible time to rectify the breach, and caused the Landlord to have to issue the Notice to End, that she is not entitled to receive her filing fee back. She could have avoided the expense of a hearing by simply complying with the warning letters sent to her.

Furthermore, the Landlord's Agent testified that the no-pet clause is in the Agreement in part to avoid damage to the property and lessen allergens to other occupants. The Tenant and her advocate testified that they would pay for the cost of fumigating the rental unit and to shampoo the carpets. I find that this is appropriate and should be done by the Tenant and her advocate as soon as possible.

Conclusion

The Tenant's Application for Dispute Resolution is allowed and the one month Notice to End Tenancy is cancelled and set aside.

The Tenant and her advocate agreed to fumigate the rental unit and have the carpets cleaned and this is to be done as soon as possible. I further determine that the Tenant should not recover the cost of filing this Application.

September 15, 2008
Date of Decision
