



Dispute Resolution Services

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

DECISION

Dispute Codes: CNC, MNDC, and FF

Introduction

This application was brought by the tenants seeking to have set aside a Notice to End Tenancy for cause dated December 28, 2008 and setting an end of tenancy date at January 31, 2009. The tenants also sought to recover the filing fee for this proceeding but withdrew a request for a monetary order for \$60

Issue(s) to be Decided

This application requires a decision on whether the notice to end tenancy was lawful and valid and whether it should be upheld or set aside.

Background and Evidence

This tenancy formally began November 15, 2008 although the tenants began moving in on November 8, 2008 on the understanding that the landlord would be coming and going until the 15th to make repairs.

During the hearing, the landlord gave evidence that the Notice to End Tenancy was served after the landlord had served the tenants with a letter demanding payment of a pet damage deposit on November 27, 2008.

According to the landlord when first negotiating the rental agreement, he had made it clear that he preferred no pets as part of a tenancy. He stated that the tenants made representation that they had a small lap dog to which their children were strongly attached and as a result, the landlord acquiesced.

On November 12, 2009, the landlord attended the rental and as he opened the door, a cat – subsequently confirmed to belong to the tenants – ran in to the house and he saw what he described as a “pit bull” and what the tenant said is a “bull terrier.”

The landlord then issued notices dated November 12th and November 13th to the tenants giving them notice to remove the pets. The landlord also offered to return the tenants money and proposed a Mutual Agreement to end tenancy, declined by the tenants.

When the tenants had not removed the pets by November 27, 2008, the landlords issued the demand for the pet damage deposit.

The tenant held that no representation was made to indicate that the dog in question was a lap dog and that they had disclosed to the landlord that they had a cat. She stated that the tenants had checked with her previous landlord and had been assured that the pets had caused no damage to the former rental unit.

Analysis

Section 20(c)(2) of the Act states that a landlord may demand a pet damage deposit “when the landlord agrees that the tenant may keep the pet on the residential property.”

I find that the landlord had honestly contemplated a very small lap dog when he, with some reluctance, agreed to accept the dog when negotiating the tenancy as evidenced by his subsequent orders that the pets be removed from the premises.

I further accept the evidence of the landlord that he was not advised that the tenants also had a cat.

However, I find that he granted permission by his letter of November 27, 2008 and from that time he was fully justified in demanding a pet damage deposit.

By failing to pay the pet damage deposit within 30 days, I find that the tenants have breached section 47(1)(a) of the *Act* and that the Notice to End Tenancy of December 28, 2008 is lawful and valid.

On hearing that determination, the landlord requested – and I find he is entitled to – an Order of Possession. However, as the Notice was Served by posting when the tenants refused personal service, it is deemed to have been served on January 1, 2009 and the end date of the tenancy is self-correcting to February 28, 2009.

Conclusion

Accordingly, the landlord's copy of this decision is accompanied by an Order of Possession effective at 1 p.m. on February 28, 2009.

As the tenants' application has not succeeded, they must remain responsible for their own filing fee.

January 29, 2009

Dispute Resolution Officer