



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated April 30, 2009 and effective June 1, 2009.

Both the landlord and the tenant, along with an advocate for the tenant, appeared and gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause on the basis that the or whether it should be cancelled. This requires a determination of whether the tenant:
 - Failed to comply with a material term and did not correct the situation within a reasonable time after being given reasonable time to do so.

The burden of proof is on the landlord/respondent to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act.

Background and Evidence

Submitted into evidence by the tenant was a copy of the One-Month Notice to End Tenancy for Cause dated April 30, 2009. The landlord testified that a material term in the tenancy agreement prohibited pets. No copy of the agreement was in evidence. The landlord testified that the tenant had a dog on the premises and was given a letter advising the tenant that this was a violation of the tenancy agreement and that the tenant had 14 days to comply with the agreement. No copy of the letter was in evidence. It was established that the letter was placed in the landlord's mailbox on April 13, 2009. and as such was deemed under section 90(a) of the Act as served on April 16, 2009. The landlord testified that on April 30, 2009 the landlord delivered a One-Month Notice to End Tenancy to the tenant and observed that the tenant was still in violation of the tenancy as the dog was still on the premises.

The tenant testified that this was a long-term tenancy. The tenant had originally lived in one unit in the building but moved to another unit in the same building on August 28, 2006. The tenant confirmed that there was a "no pets" clause in the tenancy agreement and that a letter was issued by the landlord giving the tenant 14 days to remove the dog. The tenant testified that the dog had initially been left in the tenant's temporary care. The tenant testified that the owners of the dog never came back to Canada and the dog remained with the tenant. However, according to the tenant, the landlord did not express any objection despite being aware of the presence of the dog over a long period of time. The tenant testified that recently when the landlord's son-in-law confronted the tenant about having a dog in violation of the tenancy agreement, the tenant agreed to comply but asked for some time to find the dog a good home. The tenant testified that this individual was not willing to discuss the matter. The tenant testified that the tenant succeeded in finding the dog a new home on April 30, 2009 the day that the landlord served the One-Month Notice to End Tenancy for Cause.

Analysis

In regards to the tenant's keeping a dog on the premises contrary to the tenancy agreement, it must be established whether or not there was a breach of a material term not corrected after a written warning to do so.

The tenant's actions of having a pet in the unit would only meet the criteria under 47(1)(h) of the Residential Tenancy Act if the prohibition on pets was considered to be a material term of the tenancy. Also the landlord would have to prove that the tenant was given a written warning that the tenant must comply within a reasonable amount of time that was not regarded. I find that although a copy of the tenancy agreement is not in evidence before me, from the testimony of both parties, it is clear that there was a rule against having a pet. To be considered a material term, it must go to the root of the contract and be of sufficient importance that a breach would justify the end of the entire tenancy agreement. However, although the landlord stated that this was a material term, it is clear that the tenant did not necessarily consider the no-pets clause to be material term, the breach of which would serve to jeopardize the tenancy. Moreover, the fact that the landlord was apparently aware of the presence of the dog for quite a long time, without taking any action such as issuing a written warning, may have had the effect of giving the tenant a false impression that keeping the animal was not a serious breach of the agreement. It is a fundamental principle of administrative fairness and natural justice that a person accused of violating a rule or law, be afforded some warning that their conduct is not acceptable, and that they be made aware that failure to cease the conduct will place the continuation of their tenancy at risk, following which they must also be given an opportunity to answer to the allegations or correct the problem.

In any case, after a substantial delay, the landlord finally did issue a written warning to the tenant clearly letting the tenant know that a breach of the no-pets clause would no longer be tolerated. The landlord gave the tenant 14 days in which to correct the breach and I find this amount of time to be reasonable.

I find that the landlord served the One Month Notice to End Tenancy for Cause on April 30, 2009, which was the 14th day after service of the warning letter giving the tenant 14 days to comply. I find that the tenant would not technically be beyond the deadline until the following day and the landlord issued the notice prior to the expiry of the deadline. Moreover, the landlord also failed to prove that the breach had continued beyond April 30, 2009.

Given the above, I find that the Landlord has failed to show that the One-Month Notice to End Tenancy for Cause must be upheld. Accordingly, I grant the tenant's application to have the Notice cancelled.

Conclusion

Based on evidence and testimony above, I order that the One-Month Notice to End Tenancy for Cause of April 30, 2009 is hereby cancelled and of no force or effect.

June 2009

Date of Decision

Dispute Resolution Officer