



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, OPC

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 January 20, 2010 and effective February 28, 2010 and a cross application by the landlord seeking an Order of Possession for Cause based on the Notice.

Both the landlord and 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 is supported under the Act 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 a copy of the tenancy agreement, a copy of the One-Month Notice to End Tenancy for Cause dated January 20, 2010, a copy of a written complaint from an individual regarding a cat seen in the tenant's window, dated March 3, 2010, a copy of a rent receipt for February 2010 issued "for use and occupancy only", a copy of 2 letters from the landlord to the tenant dated December 9, 2009 discussing alleged breaches of the agreement by the tenant and a copy of a letter from the landlord to the tenant dated January 21, 2010 in regards to the tenant allegedly failing to comply with the breached material term.

The landlord testified that the tenant has kept two pet cats in the unit contrary to the terms of the tenancy agreement which prohibits cats or dogs from being on the premises. The landlord testified that it had been noticed that the tenant had the animals in the unit and a letter was sent on December 9, 2009 advising the tenant that having no pets was a material term of the tenancy and this was a breach of the agreement. The landlord testified that further complaints were received and the landlord then gave notice that an inspection of the unit would be made. On January 20, 2010 the landlord testified that she personally witnessed the tenant's brother leaving the unit with two cats contained in a carrier kennel. The landlord then issued a One-Month Notice to End Tenancy for Cause. The landlord's position was that the tenant continued to breach the material term after being given written notice to comply and therefore an Order of Possession was warranted. The landlord stated that the tenant still has the cats in the unit as evidenced by the latest written complaint received on March 3, 2010 and the fact that the landlord had also heard the cats in the background during a telephone call to the tenant.

The tenant testified that it was necessary for her brother to stay in the unit to assist her with childcare and other tasks, being that the tenant was undergoing medical treatment and was not able to function without help. The tenant freely admitted that her brother did bring his cats with him while visiting her, but that they did not reside with the tenant for

any significant duration and that her brother and his cats have since left. The tenant's testimony was that the cats were removed after the landlord's warning. The tenant disputed the landlord's testimony that the cat remained beyond a reasonable period and objected to the allegation that the pets are still in the unit at present. The tenant stated that the landlord's reliance on malicious written complaints from a neighbouring resident was not fair.

Analysis

In order to meet the criteria under 47(1)(h) of the Residential Tenancy Act, it must first be established:

1. whether or not there was a term prohibiting cats,
2. whether or not the term was breached
3. whether this term was considered to be a material term and:
4. whether or not, after a written warning to do so, the tenant failed to correct the breach

I find that there was a clear term in the tenancy agreement banning cats in the rental unit.

However, I find that that a tenancy term would be overly restrictive for a prohibition against animals to be applied universally to any and all visitors accompanied by their animals as a sufficient basis upon which to terminate a tenancy. I find that a restriction for visitor pets should be applied within reason based on whether or not they have caused genuine damage, created a disturbance or posed a risk to other residents.

While I accept the tenant's testimony that the animals did not reside in the unit but were brought there by her brother who was visiting, I also find that, because the visits entailed overnight occupancy for significant periods, there were times when, the cats

were effectively residing in the unit . I find that this would be in breach of the tenancy agreement.

Regardless of the wording in the agreement, to be considered a material term, the term in question must go to the very root of the contract and be of sufficient importance that a breach would justify the early end of the entire tenancy agreement.

The tenant pointed out that other kinds of pets appeared to be tolerated by the landlord. I find, however, that the agreement prohibited “any pet” and specifically mentioned cats and dogs. The contract also identified the no-pet clause as a material term and indicated that failure to comply would serve to jeopardize the tenancy. I find that because the landlord issued a written warning to the tenant in December clearly letting the tenant know that a breach of the no-pets clause would not be tolerated, the expectation was that the tenant would not have the cats living in the unit thereafter.

I accept that on January 20, 2010 the landlord had witnessed the tenant’s visitor leaving the unit just prior to a scheduled inspection with two cats in a carrier. The landlord felt that this constituted clear proof that the tenant had not corrected the situation within a reasonable time. However, I find that this incident only showed that a visitor of the tenant had two cats in a carrier while leaving the unit with them. I find that cats or dogs brought on the premises by a visitor of the tenant and contained in a carrier or kennel would not violate the tenancy term against resident pets in the unit unless it was proven by the landlord that they resided in the unit.

Towards establishing the necessary proof, the landlord offered verbal testimony alleging that the cats were still living in the unit despite the warning. On the other hand, the tenant offered verbal testimony as well, that disputed the allegation that the cats remained living in the unit after the warning. It is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof and to overcome that burden, their evidence must be supported. The landlord

carries the onus of proving during these proceedings, that ending the tenancy is justified under the Act and when the evidence consists of conflicting and disputed verbal testimony in the absence of independent evidence, then the party who bears the burden of proof is not likely to prevail.

I find that the March 3, 2010 complaint from another resident who was not at the hearing, must be assigned minimal weight given the inability to cross examine this individual. In any case, I find that this report, likely submitted in confidence from the third-party, would not have effectively functioned to support the One-Month Notice of January 20, 2010.

Given the evidence and testimony, I find that the Landlord has failed to prove 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 dated January 20, 2010 is hereby cancelled and of no force or effect.

March 2010

Date of Decision

Dispute Resolution Officer