

DECISION

Dispute Codes

For the landlord – OPC, OPB, O, FF

For the tenant - CNC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The landlord seeks an Order of Possession for cause and seeks an end to the tenancy because the tenant breached an agreement with the landlord. The landlord has other issues and seeks to recover the filing fee paid for the application. The tenant seeks to cancel the One Month Notice to End Tenancy.

The landlord served the tenant by registered mail on March 24, 2010 and in person with a copy of the Application and Notice of Hearing. The landlord amended their application on April 10, 2010 and served the tenant on the same day. The tenant served the landlord by registered mail on April 08, 2010 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to an Order of possession for cause?
- Is the landlord entitled to an Order of Possession because the tenant has breached an agreement with the landlord?

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?

Background and Evidence

This tenancy started on December 01, 2009. This is a fixed term tenancy for five months and was due to end on April 30, 2010. The landlord and tenant had an option to continue the tenancy on a month to month basis at the end of the fixed term. Rent for this unit was \$1,500.00 which was subsidised and the tenant paid a monthly rent of \$404.00 which is due on the first of each month. The tenant paid a security deposit of \$450.00 on November 20, 2009.

The landlords' application

The landlord testifies that the tenant has allowed her brother to live with her at the rental unit and he has two cats who also reside in the unit with them. A previous hearing was heard to deal with the matter of the cats living in the tenants unit in direct contravention of the tenancy agreement. During that hearing the landlord was unable to provide sufficient proof that the cats were residing for extended periods at the tenants unit. The tenant stated during that hearing that her brother and the cats had left the unit. Due to a lack of evidence on the landlords part the Dispute Resolution Officer at that hearing cancelled the Notice to End Tenancy and the tenancy continued.

The landlord served the tenant with another One Month Notice to End Tenancy on March 29, 2010. The reason given on this Notice was that the tenant breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so. The landlord testifies that the tenants' brother still comes to stay for prolonged periods at the tenants unit and continues to bring his cats to the unit. The landlord has provided photographs of these cats sitting at the tenants' windows and a letter dated March 28, 2010 from another tenant who has seen the cats at the windows. The landlord asked the tenant to provided information about where her brother resides to establish that the tenants' brother was not living in her unit without permission from the landlord. The landlord testifies that the tenant has failed to provide her with this information. The landlord states that the tenant is in violation of a material term of the tenancy agreement by allowing the cats to live at her unit and as the tenant receives a rent subsidy the tenant must provided evidence that her brother does not reside with her at the unit. The landlord has provided the breach letters sent to the tenant concerning the cats dated December 09, 2009, January 21, 2010, March 28, 2010 and a letter dated March 24, 2010 concerning the tenants brother residing at the unit and reiterating the rules and regulations about cats not being permitted on the property by residents or invited visitors.

The landlord has applied for an Order of Possession to take effect 48 hours after service on the tenant because the tenant has breached an agreement with the landlord that the tenancy will end at the end of the fixed term. The landlord testifies that although the tenancy agreement gave them an option to continue the tenancy on a month to month basis at the end of the fixed term, the landlord decided not to continue the tenancy. A letter was sent to the tenant on March 22, 2010 to inform the tenant that the tenancy will end at the end of the fixed term on April 30, 2010. The landlord testifies that the tenant told them they she would not move out and they would have to evict her.

The tenants' application

The tenant testifies that her brother comes to stay at her unit for one to two weeks to assist her with her medical needs and her children. She states he is a regular visitor and does bring his cats with him. The tenant states that she intends to move from the unit as soon as she can find alternative accommodation. The tenant denies telling the landlord that she would not move and they would have to evict her.

The tenant testifies that she thought the agreement was now on a month to month basis and did not recall receiving a letter from the landlord informing her that the tenancy would end at the end of the fixed term. The tenant states that she is hoping to move by July 01, 2010 and thought the landlord had to give her two months notice to end tenancy. The tenant states that she can offer no evidence to support her application to cancel the notice to end tenancy.

Analysis

In Order to meet the criteria under section 47(1)(h) of the Act, the landlord must first establish whether there was a term prohibiting cats for residents and visitors, whether or not this term was breached by the tenant, whether or not this term was considered to be a material term of the tenancy agreement and whether or not the tenant failed to correct the breach after written notice to do so.

I find there is a clear term in the tenancy agreement banning cats in the rental unit. The rules and regulations also ban cats with residents and visitors. While I find this term to be overly restrictive if the tenants' visitors kept their cats in a locked cat carrier, the landlord has provided sufficient evidence in this instance that the cats are free to roam about the house as indicated by photographs of two cats sitting in the tenants' windows. During the last hearing the tenant testified that the cats were no longer at the rental unit however evidence presented by the landlord for this hearing clearly shows that the cats were at the unit since the last hearing. The tenants' verbal testimony also confirms that her brother stays for extended periods at her unit with the cats. Consequently, I find the tenant has breached the tenancy agreement and has not corrected this breach within a reasonable time frame.

I further find the tenant has breached an agreement with the landlord concerning the date the tenancy would end. The tenancy agreement states that this is a fixed term tenancy for five months ending on April, 2010 at the end of this fixed length of time, the tenancy may continue on a month to month basis. The landlord wrote to the tenant on March 22, 2010 informing her that her lease would expire on April 30, 2010 and she would be required to vacate the rental unit by 1.00p.m. on this day. It has been established that the tenant was given a copy of this letter by the building manager on March 22, 2010. Consequently, I find the tenant has breached an agreement with the landlord as the tenancy should have ended on April 30, 2010 at 1.00 p.m.

I find the landlord has met the burden of proof in this matter and subsequently I find the landlord is entitled to an Order of Possession.

As the tenant has provided no evidence to support her application to cancel the Notice to End Tenancy it is my decision that her application is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit held of \$450.00 leaving a balance \$400.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: May 12, 2010.

Dispute Resolution Officer