

DECISION

Dispute Codes CNC, OLC, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause pursuant to section 47;
- an order to require the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- recovery of the tenant's filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he provided the tenant with the Notice to End Tenancy for Cause on July 6, 2010 by posting it on the tenant's door. He provided a signed statement from a person who witnessed that posting. The tenant confirmed that she had received the landlord's Notice to End Tenancy. At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy was dismissed.

The tenant testified that she served the landlord with her application for dispute resolution by registered mail on June 23, 2010. She provided a Canada Post Tracking Number confirming this method of service. The landlord confirmed that he had received the tenant's application. The parties confirmed that they received evidence packages from one another. I am satisfied that the landlord and tenant have served the above documents to one another in accordance with the *Act*.

Issues to be Decided

Is the tenant entitled to an order cancelling the landlord's notice to end tenancy? Is the tenant entitled to recover her filing fee from the landlord? Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the tenancy commenced by way of a one-year fixed term tenancy agreement on June 1, 2010. Rent was established at \$1,050.00 per month, payable on the first of each month. The landlord testified that he received the tenant's \$525.00 security deposit on May 18, 2010. The landlord gave sworn evidence that no pet deposit was paid by the tenant.

The landlord submitted a copy of the original listing for this tenancy which stated that the building was "pet friendly" and that pets would be considered on an individual basis. The landlord provided undisputed testimony that before the tenant moved into the rental premises the tenant told him that she had a mixed breed dog, but that she was looking for a home for the dog and did not plan to bring it with her if she moved into the rental premises. The landlord entered into evidence a copy of the signed addendum to the tenancy agreement which states that "No pets are allowed unless approved by the Landlord." The landlord presented a copy of the addendum to another tenancy agreement where he had initialled his approval that the tenant could keep a pet in the rental premises. He testified that it was his standard practice to meet the pet and the tenant before he granted written approval to a tenant to keep a dog on the premises. He testified that he told the tenant that she could not keep her dog in the rental premises as soon as he met the dog and realized that it was a pit bull. When questioned as to why she had told him that her dog was a mixed breed instead of a pit bull, he testified that she said that landlords often refuse to let tenants keep a pit bull in their rental premises.

The landlord entered into evidence copies of emails and letters he had received from other tenants in the building who were concerned that the tenant was keeping a pit bull at her rental premises. These emails cited specific incidents where tenants felt threatened and were concerned for their safety and the safety of their pets and others in the building.

The tenant did not dispute the evidence presented by the landlord regarding the addendum to the lease or the conversations they had before she leased the property. She testified that the landlord told her that large dogs, small dogs and cats were allowed in the building and that it would be alright for her to keep her pet on the premises. She confirmed that the landlord did not give her written permission to keep her dog on the premises, nor did he give her approval to do so in accordance with the addendum to her tenancy agreement. She confirmed the landlord's testimony that he told her that she would not be allowed to keep her dog on the premises when he met the dog for the first time as she was moving into the premises. She testified that her mother was also prepared to give evidence that the landlord told her that she would be allowed to keep her dog on the premises.

The tenant provided testimony that her dog was friendly and did not present problems to other animals, children or adults. She entered into evidence photographs of her dog to demonstrate her claim that her pet was no danger to others. She said that they keep a muzzle on the dog when he leaves their rental premises. The landlord questioned this evidence, citing an incident where the dog was not wearing its cloth muzzle. He also questioned the ability of this type of muzzle to protect the safety of other animals, children and adults.

Analysis

The landlord has applied for a One Month Notice to End Tenancy for Cause pursuant to the following provisions of section 47 of the *Act*:

- the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property (47(1)(d)i) of the *Act*);
- the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant (47(1)(d)(ii) of the *Act*); or
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so (47(1)(h) of the *Act*).

It is only necessary to demonstrate that one of these provisions has been contravened by the tenant's actions in order to dismiss the tenant's application for cancellation of the landlord's notice to end tenancy for cause.

In considering the landlord's assertion that there has been a breach of a material term of the tenancy agreement, the standard of proof is high. It is necessary to prove that there has been a significant interference with the use of the premises. To determine the materiality of a term, a dispute resolution officer will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach.

It falls to the person relying on the term, in this case the landlord, to present evidence and argument that the term was a material term. A material term is a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. The Dispute Resolution Officer will look at the true intention of the parties in determining whether or not the clause is material.

In this case, there is no doubt that the landlord reserved the right to approve all requests to keep pets on the rental premises. The landlord was very clear in the original listing for this tenancy that requests to keep pets would be considered on an individual basis. I

accept the landlord's undisputed testimony that he could not make an assessment of the suitability of the pet for the property until he met the pet at the property when the tenant was moving into this building. I accept the landlord's undisputed testimony that the tenant was purposefully vague in describing her dog to the landlord so as to avoid being told that she could not keep the dog on the rental premises. The tenant signed an addendum to the tenancy agreement confirming that approval was needed before a pet could be kept on the rental premises. The tenant testified that she understood that the landlord had not given her approval to keep her pet on the premises when she signed the addendum to the tenancy agreement. There was no provision for a pet deposit in the tenancy agreement, further confirming the landlord's assertion that he understood that the tenant would not be bringing a dog to the rental premises.

The landlord has testified that retaining control over the types of pets allowed to stay on the rental premises is an important feature of the tenancy agreement at this property. I find that the pet provision in the addendum to the tenancy agreement is a material term of that agreement and that the tenant has breached that agreement by bringing her pit bull to live with her at the rental premises.

I also find that the landlord has provided sufficient evidence to demonstrate that the landlord and other tenants have been unreasonably disturbed by the tenant's breach of a material term in the tenancy agreement and have legitimate concerns regarding their health and safety resulting from the tenant's actions.

I dismiss the tenant's application to cancel the landlord's One Month Notice to End Tenancy for Cause. Since the landlord's notice to end tenancy has not been cancelled, I approve the landlord's request for an Order of Possession. I grant the landlord an Order of Possession to take effect on or before September 30, 2010. I am attaching an Order of Possession which must be served on the tenant. If these premises are not vacated on or before one o'clock in the afternoon on September 30, 2010, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenant's application has not been successful, she is not entitled to recover the filing fee for her application from the landlord.

Conclusion

I dismiss the tenant's application to cancel the landlord's notice to end tenancy. I dismiss the tenant's application for recovery of her filing fee. I grant the landlord an Order of Possession to take effect on or before one o'clock in the afternoon on September 30, 2010.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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*.