



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND ORDER

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a one month Notice to End Tenancy issued for alleged cause, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the one month Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

The parties were involved in a prior hearing, under a different file number, on August 10, 2010. In the Decision for that hearing, the Landlord was order to make repairs to the rental unit, including the carpet. The Dispute Resolution Officer ordered that if the repairs were not completed by August 31, 2010, the Tenants' rent would be reduced. The issue of pets came up in that hearing and the Dispute Resolution Officer found that the carpet wear was beyond what a house cat could cause.

The Landlord issued the Tenants a one month Notice to End Tenancy for an alleged breach of a material term of the tenancy agreement, and served it on August 31, 2010. The Tenants filed this Application requesting the Notice to End Tenancy be cancelled.

The Landlord alleged in the hearing that the Tenants breached a material term of the tenancy agreement by having pets in the rental unit. The Landlord alleges that the tenancy agreement has a not pets clause and the Tenants have violated this clause.

There was no evidence submitted by the Landlord, such as the tenancy agreement, in support of the Notice to End Tenancy. An Agent for the Landlord testified that she had

a copy of the tenancy agreement in her file and alleged it had come from the Tenants in their evidence package. She felt she did not have to submit the tenancy agreement if the Tenants had already provided this.

The Agent for the Landlord also testified that the Landlord was reluctant to repair the carpets in the rental unit, as previously ordered in the earlier hearing, because the Tenants have guinea pigs in the rental unit and these are eating the carpets.

The Tenant testified that she was not certain if the other Tenant provided a copy of the tenancy agreement in evidence to the Landlord or to the Residential Tenancy Branch.

Analysis

Based on the foregoing, the evidence and testimony, and on a balance of probabilities I find that the Notice to End Tenancy must be cancelled and I allow the Tenants' Application.

The onus to prove that the Notice to End Tenancy is valid is on the Landlord. Here the Landlord provided insufficient evidence that the tenancy agreement includes a no pets clause.

Furthermore, there was no evidence provided that the Landlord had issued the Tenants a warning letter to correct the breach and had given them sufficient time to do so, as required under section 47(1)(h) of the Act.

Regardless of what the Landlord received from the Tenants in evidence, the Landlord still must provide evidence to support its Notice to End Tenancy case. Without making a binding determination on this issue, it appears that the Landlord is simply trying to avoid the previous order by ending this tenancy.

Therefore, I order that the Notice to End Tenancy issued on August 31, 2010 to the Tenants is cancelled and is of no force or effect.

The Tenants may **deduct \$50.00** from their next rent payment to recover the filing fee for this Application.

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: October 18, 2010.

Dispute Resolution Officer