

Decision

Dispute Codes: CNC, OPC

Introduction

This hearing dealt with the tenant's application for cancellation of a 1 month notice to end tenancy for cause. Both parties participated in the hearing and gave affirmed testimony.

During the hearing the landlord confirmed that in the event the tenant is not successful in her application, the landlord seeks to obtain an order of possession.

Issue to be decided

- Whether either party is entitled to the above under the Act

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 1, 2001. Currently, the tenant's portion of monthly rent is \$461.00. A security deposit of \$500.00 was collected near the outset of tenancy.

The landlord issued a 1 month notice to end tenancy for cause dated November 12, 2010. The notice was personally served on the tenant on that same date. Following this, the tenant filed an application to dispute the notice on November 19, 2010. A copy of the notice was submitted in evidence. The reason shown on the notice for its issuance is as follows:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord claims that the tenant's ownership of a dog, and her failure to comply with certain related terms of the tenancy agreement, constitute a breach of a material term of the tenancy agreement.

Further to a copy of the tenancy agreement, related documentation in evidence includes, but is not necessarily limited to, addendum “A” – additional terms, pet ownership rules, amendment #28 dated February 2002, and letters to the tenant dated September 13, October 7, October 14, and November 3, 2010.

Pursuant to addendum “A” of the tenancy agreement, tenants are not permitted to own pets. However, pursuant to amendment #28, the pet policy was amended in February 2002. In the result, tenants were permitted to own pets provided that tenants complied with the pet ownership rules.

The landlord takes the position that the tenant has breached certain of the pet ownership rules. Specifically, it is alleged that when the tenant replaced the dog which was originally registered with the landlord, she failed to register her new dog; the landlord considers that the tenant breached pet rule #11 which requires, in part, that “all dogs must be registered,” as well as rule #15 which requires a tenant to inform the landlord “from time to time of any changes” to the pet registration information previously provided.

In addition to the above, pet rule #18 informs tenants that the landlord may require a tenant to remove a pet from the property or may terminate a tenancy where the tenant is in breach of any of the terms of the pet ownership rules.

The landlord testified that since 2008, the complex has again become a “non-pet complex.” However, there was no related documentation to that effect in evidence.

By letter to the tenant dated September 13, 2010, the landlord reminded the tenant that the complex had become a “non-pet complex since 2008,” and also pointed out that the tenant’s dog is “over the accepted size.” In this letter the landlord informed the tenant that this “is a serious reason to end the tenancy” and, went on to request that the tenant “remediate this situation.” In regard to the allowable size of pets, pet ownership rule #8 provides that a small dog may not exceed a weight of thirty (30) pounds. During the hearing the tenant did not dispute that her dog likely weighs more than 30 pounds.

After receiving the above letter, the tenant sought to register her pet with the landlord. However, the landlord declined to register the new pet mainly on the basis that, as earlier noted, the complex had become a non-pet complex since 2008. And, as also noted earlier, the pet was perceived to be “over the accepted size.”

By letter to the tenant dated October 7, 2010, the landlord reminded the tenant that, in addition to other things, failure to comply with rule # 18(c) may require a tenant to remove a pet from the premises or face termination of the tenancy. Rule #18(c) speaks to the tenant’s obligation to inform the landlord of any “changes to information provided on initial application” for registration of a pet.

By letter dated October 14, 2010, the landlord informed the tenant of a concern that the dog was “not restrained on a leash when in the grounds or common area.” The tenant was instructed in this letter to “remove your new dog from the premises within ten (10) days after receiving this letter.”

Finally, by letter dated November 3, 2010, the landlord acknowledged receipt of a message from the tenant to the effect that she had found another home for her dog and would be removing him from the complex on or about October 22, 2010. However, as the dog had not been removed by that time, in this letter the landlord informed the tenant that her dog must be removed from the premises within 72 hours of receipt of the letter. The tenant was further advised that failure to comply would lead to the issuance of a 1 month notice to end tenancy.

Analysis

While I find there is no documentary evidence to support the landlord’s claim that the complex officially became a non-pet complex in 2002, based on the documentary evidence and testimony of the parties, I find that the tenant breached a material term of the tenancy agreement by not complying with certain pet ownership rules. Specifically, I find that the tenant failed to register her new dog with the landlord, and effectively failed to inform the landlord of changes to information provided on the original pet registration

form. Additionally, I find that the tenant breached the pet ownership rule which concerns the permitted maximum size of a dog. I further find that the tenant was cautioned about the relevant provisions contained in the pet ownership rules, which provide that failure to comply may lead to the landlord's issuance of a notice to end tenancy. In sum, I find that the landlord has established entitlement to an order of possession.

The order of possession is to be effective by not later than 1:00 p.m., Monday, January 31, 2011. However, the parties are encouraged to explore together whether the tenancy may be permitted to carry on uninterrupted, in the event that the tenant is able to find another home for her dog before January 31, 2011.

Conclusion

I hereby issue an order of possession in favour of the landlord effective not later than **1:00 p.m., Monday, January 31, 2011**. This order must be served on the tenant.

Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the tenant has not succeeded in her application to cancel the notice to end tenancy, her application to recover the filing fee is hereby dismissed.

DATE: December 14, 2010

Dispute Resolution Officer