

DECISION

Dispute Codes: CNC

Introduction

This application was brought by the tenants seeking to have set aside a one-month Notice to End Tenancy for cause served on October 14, 2010 according to the application, (actual notice is dated October 15, 2010), setting an end of tenancy date of November 30, 2010. The tenants also sought to recover the filing fee for this proceeding from the landlords.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy should be set aside or upheld.

Background and Evidence

This tenancy began on September 1, 2009. Rent is \$1,250 per month and the landlord holds a security deposit of \$625.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served because the tenants had acquired a second cat without her consent. She noted that the rental agreement submitted into evidence included the term, "One small dog and one cat agreed."

The landlord stated that she became aware of it, she had asked the tenants to remove the second cat on August 14, 2010. When they had not done so, she wrote to them on September 30, 2010 reminding them that the rental agreement allowed for one cat only. On October 3, 2010, the landlord again wrote to the tenants advising that they were in breach of a material term of the rental agreement and that if the cat was not removed by October 14, 2010, she would issue a Notice to End Tenancy for the breach.

The tenants said that the landlord had been aware of the cat and had consented by acquiescence. The landlord and her son who lives on the property stated that they had never given their consent for the second cat.

The landlord's son and a written submission from a neighbour made claim that the cat in question had terrorized and injured their cats, but the tenants strongly contested that the cat in question was capable of doing so and noted that it had been neutered and its claws kept trimmed.

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Analysis

Section 47(1)(h) of the *Act* provides that a landlord may issue a Notice to End Tenancy for cause in circumstances in which the tenant has failed to comply with a material term of the rental agreement and has not corrected the breach within a reasonable time of receiving written notice to do so.

As the parties gave conflicting evidence as to whether the landlords had ever given verbal consent for the second cat, I must rely on the written submissions.

I find that the permission for one small dog and one cat written into the rental agreement is a material term of the agreement and that the landlord's letter of October 3, 2010 constituted written notice of the breach.

As the tenants concurred that the second cat remains in the rental unit, I find that the breach was not corrected within a reasonable time of receipt of the letter.

Therefore, I find that the Notice to End Tenancy is lawful and valid and declined to set it aside. On that determination, the landlord requested an Order of Possession.

While the Notice to End Tenancy set an end date of November 30, 2010, the landlord agreed to permit the tenants to remain until December 31, 2010 on their promise that they would keep the second cat indoors for the duration of the tenancy. The tenants agreed.

Having found that the tenancy ends on the breach of the material term, I have not found it necessary to review details of the alleged injury to the other cats.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on December 31, 2010.

November 18, 2010