



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, LRE, LAT, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause. The tenant seeks an Order to suspend or set conditions on the landlords' right to enter the rental unit and authorization to change the locks to the rental unit. The tenant seeks to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord. The landlords' agent confirmed receipt of these documents on January 09, 2011.

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:

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy for cause cancelled?
- Is the tenant entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?
- Is the tenant entitled to change the locks to the rental unit?

Background and Evidence

This tenancy was due to start on January 01, 2011 as agreed in the tenancy agreement signed by the tenants on December 02, 2010. However the tenants were given permission to move into the rental unit early on December 13, 2010. This is a fixed term tenancy which is due to expire on December 31, 2011. Rent for this unit is \$1,600.00 per month and is due on the 1st day of each month. The tenants paid a security deposit of \$800.00 on December 12, 2010.

The landlord testifies that the tenants were served with a One Month Notice to End Tenancy on December 28, 2010. This gave an effective date to end the tenancy as of January 31, 2011 due to the following reasons: 1) the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. 2) Non-compliance with an Order under the legislation within 30 days after the tenant received the Order or the date in the order.

The landlord testifies that the tenancy agreement signed by the tenants clearly states under section 18 that unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal including a dog. This section goes on to state that this is a material term of a tenancy agreement. If the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has the right to end the tenancy. The landlord also states that under section 44 of the tenancy agreement it has been written 'no pets'.

The landlord testifies that the original advertisement for the unit clearly stated no pets and he has provided an e-mail with a copy of the wording of that advertisement which he believes was the correct wording in the original advert posted on Rent BC and Castanet.

The landlords' agent testifies that due to the fact that the tenancy agreement had to be sent to the landlord to be signed it was not given to the tenants until January 12, 2011.

The landlord testifies that the tenants were found to have two dogs and had not obtained written permission from the landlord prior to allowing these dogs to be on the property. The landlord

states he is severely allergic to dogs and would not have given the tenants permission to have dogs due to his allergies. The landlords' agent testifies that the tenants were served a breach letter on December 20, 2010 concerning the dogs which stated that the tenants were in breach of a material term of their tenancy agreement and asked the tenants to remove the dogs no later than December 31, 2010. The landlords' agent testifies that the tenants failed to comply with the removal of the dogs by this date. The landlord requests an Order of Possession for the middle of February, 2011 to give the tenants time to find alternative accommodation.

The tenants dispute the landlords and his agents' claims. The male tenant testifies that when they first moved in they did not have dogs but states he was under the impression he could get permission to have the dogs at the property as he was looking after them for his father who was in hospital. The tenant states they were not aware of the clause in the tenancy agreement which stated they had to get written permission from the landlord to have pets as they were not given a copy of the agreement until January 12, 2011. The tenant also states they had not initialled the box at the end of the agreement which states 'no pets' and suggest the landlord added this after the agreement was signed.

The tenant states the original advertisement did not include a statement relating to no pets and the tenants state they saw the advert for the unit on Castanet not Rent BC. The tenant states he did not keep a copy of the advert.

The male tenant testifies that after the landlords' agent saw the dogs he said they could keep them at the property until they moved out and he states they agreed they would then clean the house to get rid of any traces of the dogs.

The tenant testifies that the landlord has entered the rental unit without posting 24 hours written notice or without the tenant's permission. He states he found a hose for the dryer inside the unit which showed that someone had been there. The tenant states they have had their privacy violated by the landlords' agent and his wife who also peers through their windows and they have had their peace and quiet enjoyment spoiled by constant phone calls from the landlord. The tenant states there was still some work to be finished on the house when they moved in and they were told the carpenter would be three hours completing this work when in fact he took three days.

The landlords' agent disputes the tenant's claims; he states he has never entered the rental unit without permission and he left the dryer hose outside the unit and has no idea how it came to be found in the unit. The landlords' agent testifies that he has given the tenant notice when the carpenter needed to come and complete work in the unit and disputes telling the tenants it would only be for three hours.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 13 (3) of the *Act* does state that within 21 days after a tenant and landlord enter into a tenancy agreement the landlord must give the tenant a copy of the agreement. I find the landlord did not give the tenants a copy of their agreement until January 12, 2011. However, as the tenants did both sign the tenancy agreement they were agreeing to the terms and conditions contained within it. It would be reasonable to assume that before signing a document of this sort that the tenants would have taken time to read the terms and conditions and would therefore have been aware of section 18 concerning obtaining the landlords written permission before having any pets at the rental property.

Consequently, I do not support the tenant's arguments that they were unaware that they could not have dogs. If the tenants had sought permission before agreeing to take in the male tenants' fathers dogs they would have been told by the landlord that this would not have been possible. Instead the tenants looked after the dogs without written permission and as such are in breach of a material term of the tenancy.

It is my decision that the landlord followed the correct course of action in first serving the tenants with a breach letter asking them to remove the dogs by December 31, 2010. While I accept the tenants were looking after the dogs in an emergency situation the landlord is entitled to serve them with the One Month Notice to End Tenancy for a breach of a material term of the tenancy agreement which was not corrected even after a breach letter was received.

Consequently the One Month Notice to End Tenancy for cause is upheld and an Order of Possession has been issued to the landlord. The landlord requests that this be effective from

the middle of February, 2011 however as the tenants have agreed to clean the unit thoroughly at the end of the tenancy to ensure no trace of dogs are present I have extended the date to vacate the rental unit to February 28, 2011.

With regards to the tenants application for an order to suspend or set conditions on the landlords right to enter the rental unit and authorization to change the locks of the rental unit; When one Parties evidence is contradicted by the other Party the burden of proof falls on the claimant to provide additional corroborating evidence to support his claim that the landlords' agent has entered the property without permission and has spoiled the tenants right to quiet enjoyment of the property. In the absence of any corroborating evidence from the tenant this section of his claim is dismissed.

Conclusion

The tenants' application is dismissed. The One Month Notice to End Tenancy for Cause dated December 28, 2010 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **February 28, 2011**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The reminder of the tenants' application is dismissed without leave to reapply.

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: January 31, 2011.

Residential Tenancy Branch