



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, OLC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy.

Background and Evidence

On January 30, 2011, the landlord served the tenant with a one month Notice to End Tenancy for cause that stated "the tenant or person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

The landlord testified that:

- When the tenant originally came to rent the rental unit, she was told that she could not have a cat in the rental unit, having a cat was a deal breaker.
- The tenant insisted that her cat was an outdoor cat and asked if they would reconsider.
- He spoke with his wife and they decided that since it was an outdoor cat they would be willing to give it a try; however the tenant agreed that if the landlord were to suffer any allergy problems due to the cat, she would get rid of the cat.
- The tenant even stated that she had someone who could take the cat if the landlord had any health problems.

- Because of this agreement and for the landlords security a “no pet” clause was added to the tenancy agreement before it was signed by all parties.
- When the tenant moved in they noticed that there did not appear to be a cat present, and the tenant informed him that her cat had been killed by coyote, and therefore she did not have a cat.
- The tenant lived in the rental unit without a cat for eight months, however when she got a cat in December he started having allergy problems and in fact the allergies have gotten so bad that he now has ongoing asthma and has to use a puffer.
- Since he was having such a bad time with the allergies he reminded the tenant of the agreement and asked her to get rid of the cat however the tenant refused to do so and therefore he sent her a letter informing her that she had to get rid of the cat.
- The tenant has refused to get rid of the cat and therefore since it was becoming a serious health issue, he gave the tenant a Notice to End Tenancy.

The landlord therefore believes that the Notice to End Tenancy should be upheld and is requesting that an Order of Possession be issued.

The tenant testified that:

- The landlords originally told her that having a cat was a deal breaker and that they would not rent to her if she had a cat.
- She informed the landlords that she really liked the place and would like to move in with her cat and the landlords changed their mind stating that they had filters in the vents that would probably prevent any cat dander from reaching their part of the house.
- She never told the landlords that it was an outdoor cat.
- She never told the landlords she would get rid of the cat if the landlord's allergies became a problem and would never have done so as it was her daughter's cat and her daughter was absolutely in love with the cat.
- She never agreed to an addendum to the tenancy agreement and it was not on the agreement when she signed it, the landlord has added that addendum.
- She did originally move in with her cat however one week later it was killed by coyote. The landlord obviously did not even know it was there.
- Since her daughter was devastated by the loss of her cat she decided to buy her daughter a new cat as a present in December.

- She does not believe that the landlord is having allergy problems due to the cat, and in fact she thinks it's because he wants to get more rent for the rental unit.
- She also believes that the landlord entered her suite and saw the cat and is using the cat as a convenient excuse to get rid of her so he can raise the rent.

The tenant is therefore requesting that this Notice to End Tenancy be cancelled and that the tenancy continues.

In response to the tenant's testimony the landlord testified that:

- The no pet addendum to the tenancy agreement was on the tenancy agreement and discussed with the tenant at the time that it was signed.
- The tenant did agree to get rid of the cat if he had allergy problems resulting from the cat.
- He has never entered the tenant suite without her permission.
- He is not using this as an excuse to get rid of the tenant and raise the rent; this is a serious health issue for him.
- They would never have agreed to have a cat in the rental unit if the tenants had not informed him that it was an outdoor cat and that she would be willing to get rid of it if his allergies became a problem.

Analysis

It is my decision that I find in favour of the landlord.

Both the landlord and the tenant stated that when the tenant originally came to rent the unit she was informed that having a cat was a deal breaker, and I find it very unlikely that the landlords would have suddenly changed their minds and told the tenant that she could move in with her cat, unless there was some agreement that if the cat became a problem for the landlord the tenant would find a new home for the cat.

The tenant also claims that she never told the landlords that her cat was an outdoor cat; however I find the landlords testimony more plausible, as I find it unlikely the landlords would have been willing to agree to having a cat, which had previously been a deal breaker, unless the tenants had given them some kind of assurance that the cat would not likely cause any problem.

I also find it more likely that the no “pet clause” was on the tenancy agreement at the beginning of the tenancy, as I find it very unlikely that the landlords would have agreed to rent to someone without such a clause in place, especially since both parties have testified that, originally, having a cat was a deal breaker.

Therefore since it’s my finding that the tenant was made aware of the landlords allergies at the beginning of the tenancy, and yet has failed to get rid of the cat even after getting a written request to do so, her actions are seriously jeopardizing the health of the landlord.

Conclusion

I dismissed the tenant’s application to cancel the Notice to End Tenancy and have issued an Order of Possession to the landlords for 1 p.m. on February 28, 2011.

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: February 16, 2011.

Residential Tenancy Branch