



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes For the Tenant: MT, CNC,
For the Landlord: OPC, FF

Introduction

This hearing dealt with cross applications filed by both parties seeking remedy under the *Residential Tenancy Act*.

The Tenant is seeking to cancel the 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the Landlord.

The Landlord is seeking an order of possession pursuant to a 1 Month Notice to End Tenancy for Cause.

The Tenant and two Landlord's Agents appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the 1 Month Notice to End Tenancy for Cause?

Is the Landlord entitled to an Order of Possession under section 55 of the *Residential Tenancy Act* (the "Act") and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that this fixed term tenancy began on January 1, 2010, continues now on a month to month basis, monthly rent is \$825.00, and a security and pet damage deposit in the amount of \$412.50 each was paid on or about December 28, 2009.

The evidence shows that the Landlord issued the Tenant a 1 Month Notice to End Tenancy for Cause on January 22, 2011, by posting on the door, with an effective move out date of February 28, 2011. The cause listed by the Landlord on the Notice alleged that the Tenant has engaged in illegal activity that has, or is likely to:

1. Damage the Landlord's property
2. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord
3. Jeopardize a lawful right or interest of another occupant or the Landlord.

Pursuant to the Rules of Procedure, the Landlord's Agent MM proceeded first in the hearing to explain why the Notice had been issued.

The Landlord's relevant evidence included a copy of the Notice, a notice to inspect the rental unit, the tenancy agreement, fellow tenants' statements regarding cat and urine smells and photos of the inside of the Tenant's rental unit taken through the Tenant's balcony sliding glass doors by a fellow tenant.

In support of the Notice alleging the Tenant is engaging in illegal activity, the Landlord's Agent MM testified that the Tenant is breeding cats for a profit and for failure to have her cats spayed or neutered, in contravention of the municipal bylaw. The Agent testified that a license is required for breeding pets.

The Landlord's Agent testified that the property manager has seen as many as nine cats in the Tenant's rental unit, including kittens. The Agent also stated that the Tenant has been given several chances and multiple warnings to correct the situation, but has not done so. Upon query, the Landlord's Agent could produce no written warnings to the Tenant.

The Landlord's Agent stated that in addition to the bylaw violation, the Tenant is in violation of the tenancy agreement and building rules regarding having her cats spayed or neutered. The Agent stated that residents with pets were to produce documentation of the animal being spayed or neutered within fourteen days of beginning occupancy.

The Landlord's Agent also claimed the Tenant has used her bathtub as a cat litter receptacle.

The Landlord's Agent SV testified that as the building manager, she has asked the Tenant several times to not let her cats continue to have litters and to have her cats spayed and neutered.

Upon query, the Landlord's Agent SV stated that the residential building had three floors, 17 rental units on each floor and 51 units in total. Additionally upon query, the Agent stated that there were four dogs in rental units on the first floor, six dogs and three cats on the second floor and five dogs and one kitten on the third floor, in addition to the Tenant's three cats. I note that when seeking independent testimony from Agent SV, I continuously heard Agent MM whispering responses to Agent SV.

The Landlord's witness testified that the cat urine odours are so bad, she can smell them down the hallway. Additionally the witness stated that the odours are creating a health risk and that she has disallowed her daughter from visiting the Tenant's rental unit because the cat odour is so strong.

I heard testimony from the witness that the Tenant was in violation of the building rules regarding pets being neutered, but upon query, the witness stated that her year old dog had not been neutered.

In her response, the Tenant admitted that she did not have her cats spayed or neutered pursuant to the building policy, but that she had been told by the former building manager that it was okay not to.

The Tenant also contended that she was unaware of the municipal bylaw about spaying, neutering or having a license to breed, but has recently sought the assistance of the SPCA in visiting her rental unit for advice and for an inspection. The Tenant stated that she is now seeking compliance with the SPCA, but that the inspection revealed her cats were well taken care of and not abused.

The Tenant stated that she has spoken with the building manager on numerous occasions about the broken seal around her door and the hole in her wall, which she contends is the source of the cat smell not being contained within her apartment. The Tenant also stated that she often smells stale cigarette, marijuana and other pet odours within the building as well, but attributed that to the lack of the central fans not being run by the current building manager.

The Tenant denied washing cat litter down her bathtub or sinks and hoarding.

The Tenant submits that the building manager has colluded with other tenants to build a case against her and that her privacy has been breached by other tenants spying on her, requiring the Tenant to hang a sheet over her sliding glass doors. The Tenant also submits that she is being harassed by the building manager, as well as other tenants.

The Tenant submits that in addition to the broken door seal and hole in her wall, she has asked on numerous occasions for the Landlord to address other issues with her concerning the rental unit, such as lack of a mail key, heat, drapes for the sliding glass door, a storage locker and a laundry card, without success.

The Tenant contends that the Landlord's witness lacked credibility as the witness has borrowed money from her in return for in kind services, but that the services have not been provided. The Tenant submits that her eviction would allow the witness to not pay her back.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have given careful consideration of all oral and written evidence before me; however, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Where a Notice to End Tenancy is disputed, the Landlord has the burden to prove that the tenancy should end for the reasons indicated on the Notice, which is that the Tenant is engaging in illegal activities. I have considered the submissions of both parties in determining whether the tenancy should end for the stated reasons.

In addressing illegal activities, *Residential Tenancy Policy Guideline 32* states an "illegal activity" would include a **serious** violation of federal, provincial or municipal law. It may also include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. Additionally the alleged illegal activity **must** have some impact on the tenancy. [Emphasis added]

The Landlord did not submit any documentary evidence of the municipal bylaw referenced by the Agents. Regardless, I find that an incident of non-compliance of a municipal spay/neuter bylaw, even if true, is not a serious violation of municipal law and is therefore not an illegal activity as defined by the Policy Guideline. I further find there is no proof that the Tenant's failure to have her cats neutered has a harmful impact on the Landlord, the Landlord's property or other occupants and lack of neutering does not impact the tenancy.

Therefore, I find the Tenant is not engaged in illegal activity as alleged in the Notice and **I order that the 1 Month Notice to End Tenancy for Cause issued by the Landlord on January 22, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues.

As to the Tenant's Application, as I have cancelled the Notice, I have not addressed the Tenant's request for additional time.

Additionally, with the photographic evidence before me, I remind the Landlord of the Tenant's right to quiet enjoyment and right to privacy as provided for in Section 28 of the Residential Tenancy Act.

For the parties' benefit, I have enclosed a copy of the Residential Tenancy Branch fact sheet for resolving a dispute on your own.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues. The Tenant is authorized to deduct \$50.00 from her next month's rent in order to recover the filing fee paid 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: March 02, 2011.

Residential Tenancy Branch