

## **DECISION**

Dispute Codes      OPT, O

### Introduction

This hearing dealt with an application by the tenant seeking an order to set aside a One Month Notice to End Tenancy for Cause. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to have the Notice set aside?

### Background and Evidence

The tenancy began on or about August 2006. Rent in the amount of \$1200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$600.00.

Both parties provided documentary evidence which was taken into consideration. The tenant also provided a witness who gave evidence.

The tenant's evidence is that they have lived in the building since 2006, had a number of pets over the years, had been given permission to have a dog by the previous property manager in January 2010, the present manager took over duties in June 2010, moved to a different unit July 2010, obtained a dog in September 2010, received notice from the present manager in March 2011 that the dog was unauthorized, tenant offered to pay the pet deposit as they believed it was a pet friendly building, and on May 26, 2011 given a One Month Notice to End Tenancy for Cause.

The witness gave evidence that there are several pets in the building, she has a dog, never asked for permission to have a pet, has not been informed by the present manager to remove the dog, has known that the subject tenant had a dog since

September 2010, and doesn't know of anyone else that received notice to remove their pet.

The landlord gave the following evidence; that since he took over the building is a non pet building, had the tenants sign a new agreement in June 2010 that states "no pets", doesn't believe that the dog has been in the building since September, received complaints about the dog from other tenants in March 2011 and decided that he would have to give the tenants notice.

### Analysis

The tenant's provided a witness that supported their position of having a dog since September 2010 as well as letters from other tenants that not only confirmed that the tenants' had the dog but also was not loud or problematic. I accept that the tenant had the consent of the previous manager as well the implied consent of the present manager as several other tenants had pets and no enforcement of the "no pets" clause was ever done.

The tenants gave testimony that the landlord's children had pet the dog in the hallways and the landlord had seen them with the dog on several occasions. The landlord stated that "I don't remember that ", however, never denied that it did. The landlord issued the Notice on May 26, 2011, however from Sept 2010 – March 17, 2011 there was never any mention of a problem in regards to the dog.

The landlord had not enforced his pet policy with the subject tenant for over seven months nor exercised it with any other tenant's in the building. With no disputing documentary evidence or witness testimony I'm unable to accept the version of the events as stated by the landlord. The landlord indicated that he was unable to present any disputing documentary evidence or witness testimony at the time of hearing due to some family health issues.

I accept the tenant's evidence.

The tenant has been successful in their application

Conclusion

The Notice is set aside. The tenancy is to continue.

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: August 22, 2011.

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Residential Tenancy Branch