



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on September 7, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 82 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started in March 2005 as a month to month tenancy. The Mobile Home Pad rent is \$340.00 per month payable in advance of the 1st day of each month.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated August 30, 2011. He said the Notice was served on August 31, 2011 by posting it on the door of the Tenant’s unit. The Effective Vacancy date on the Notice was October 5, 2011. The Landlords said they want to end the tenancy because the Tenant breached a material term of the tenancy agreement. The Landlord said the Tenant has been keeping an unauthorized cat in her unit since 2006. The Landlord’s Advocate said this is a material breach of the tenancy agreement as the Tenant has more than one pet in her unit and she did not get authorization for the cat to be in the unit or in the Park. The Landlord’s Advocate said the Tenant sign the Pet Agreement May 17, 2005 which sets out the conditions under which a Tenant may have a pet in the Park. The Landlord’s Advocate continued to say since the Tenant signed the Pet Agreement and she received authorization for her dog it indicates that the Tenant was aware of the rules governing pets in the Park. The Landlord’s Advocate pointed out the following clauses in the Pet Agreement firstly, failure to comply with the terms of the Pet Agreement is a material breach of the tenancy agreement, secondly no other pets are permitted in the tenant’s premises without approval of the landlord or that a Pet

Agreement has been completed for that pet and finally section 10 of the Pet Agreement which says the Pet Agreement is part of the Tenancy Agreement and is enforceable under the Residential Tenancy Act. A copy of the Pet Agreement was submitted into evidence.

The Landlord's Manager said he spoke with the Tenant May 18, 2011 about the unauthorized cat. The Manager said he told the Tenant; she must receive authorization for the cat from the Park management or remove the cat from the Park. The Manager said the Tenant did not get authorization for the cat so he wrote the Tenant a letter dated June 5, 2011 informing the Tenant to board the cat outside of the Park by June 10, 2011. The Manager said he received a letter back from the Tenant dated June 6, 2011 requesting to register the cat by the receipt of that letter and the Tenant said she would not remove her cat from the Park. The Manager said the Tenant's letter made a request to register the cat in the letter, but the Manager said there is a protocol for information about pets to authorize a pet so they need to talk to the Tenant in person in order to authorize/register a pet. The Manager said he has not authorized a pet by a mail in request. The Manager continued to say there was no meeting arranged to talk with the Tenant to authorize/register the Tenant's cat. The Manager continued to say on August 26, 2011 he wrote the Tenant to summarize the situation and to give the Tenant final notice to remove the cat from the Park. The Manager said the Tenant did not remove the cat from the park, but she did write him a letter acknowledging his letter and the Tenant said she would not remove the cat from the Park at that time.

The Owner of the Park B.P. said he considers the pet clauses in the Pet Agreement and the tenancy agreement to be material clauses to the tenancy agreement. The Owner B.P. continued to say that he has not entered into other tenancies with potential tenants that have cats because of the "no cats" rule in the R.V. part of the Park and some existing tenants that have cats have left the R.V. part of the Park due to the cat restrictions. The owner said the "no cat" rule was introduced to the R.V. Park April 4, 2008 by a Notice sent out to the Tenants by the Manager T.M. The Manager said the Tenant received the "no cat" notice. The Tenant said she agreed that she did received the "no cat" notice dated April 4, 2008. The Owner B.P. continued to say there are no cats in the R.V. part of the Park to his knowledge and he does not want to treat this Tenant any differently than he would treat any other tenant in the R.V. part of the Park. The Owner B.P. said no one is allowed to have a cat in that part of the Park.

The owner continued to say the cats are an issue in the R.V. part of the Park as they get under the units to defecate causing a strong odour, the cats dig up gardens to defecate and some of the tenants have made complains that the cats are chewing wires under the units in the R.V. part of the Park. The Owner said these concerns are what brought about the "no cat" policy in the R.V. part of the Park.

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The Tenant said she didn't think that she had to register the cat in her unit. The Tenant said she has had the cat since 2006 and she believes the Manager most likely has seen it in her unit over the last 5 years. The Tenant said the Manager hasn't said anything about the cat until there were other issues between the Tenant and the Landlord. The Tenant Agent said she believes the Notice to End Tenancy for Cause (unauthorized cat) was a punitive action by the Landlord for the Tenant being successful in other disputes with the Landlord. The Tenant continued to say that she did signed the Pet Agreement and she did register her dog with the Landlord and she did understand the Pet Agreement when she signed it. The Tenant continued to say another tenant in the Mobile Home part of the Park about four pads away from her pad has a cat and a dog in their unit so she believes she should be able to as well. The Landlord said the dog and cat in that unit are both authorized/ registered with the Landlord.

The Tenant's Advocate said the Notice to End Tenancy for Cause for breaching a material term of the tenancy agreement is invalid because the pet clauses in the tenancy agreement and Pet Agreement are poorly written and vague. Neither document tells the Tenant's how to register pets and it is vague about what pets are to be registered and or controlled. The Tenant's Advocate provided a number of examples of case law to support her claim that the Pet Clause and Pet Agreement should not be included as a material clause of the tenancy agreement. In addition the Tenant's Advocate said the Tenant's cat was in the unit in 2006 which was before the "no cat rule" in the R.V. part of the Park (April, 2008); therefore the cat should be grandfathered into the Park and the rule should not apply to the Tenant's cat.

The Tenant's Advocate continued to say there was no clause in the tenancy agreements that indicated the Tenant could only have one pet, therefore the Landlord's claim that the Tenant having two pets in her unit was a material breach of the tenancy agreement. The Tenants referred to the pet clause in the Mobile Home Pad Rules and Regulations which says only one small dog is allowed, but does not mention the number of pets if they are different species.

As well the Tenant's Advocate said the pet clause in the tenancy agreement and Pet Agreement do not constitute a material cause as the ownership of pets is allow in the Park and it is common for many of the tenants to have pets. In addition it is the belief of the Tenant that the Manager knew about her cat and he said nothing to her until the Manager said he asked her why the cat was not registered in their conversation of May 18, 2011. The Tenant's Advocate said the Tenant does not agree that meeting took place. The Tenant said she does not remember taking to the Manager about the cat on May 18, 2011.

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The Tenant's advocate ended by saying the pet clauses in the tenancy agreement and in the Pet Agreement do not constitute a material term of the tenancy agreement as they are not an essential part of the tenancy. The Tenant's cat should be grandfathered into the Park as the management of the Park most likely knew the cat was in the unit and it has been in the Park since 2006. The Tenant's Advocate said if the pet clauses and Pet Agreement are not material terms of the Tenancy Agreement then the Notice to End Tenancy must be cancelled.

The Landlord's Advocate said the pet clauses in the tenancy agreement and the Pet Agreement are material terms of the tenancy agreement, because that is how the Landlord tries to control pets in the Park.

Analysis

There was contradictory testimony and a substantial amount of written evidence submitted to support each parties positions. After reviewing the submissions and the testimony of all the parties to the hearing it is apparent that there is two central issues; firstly is registering /authorizing a pet with the Landlord a material term of the tenancy agreement and does the "no cats" rule in the RV part of the Park apply to the Tenant's cat. It was agreed by both the Landlords and the Tenant that the Tenant signed the Pet Agreement dated May 17, 2005 which explains the rules governing pets in the Park. The first sentence says "No pet may be brought into the Park or acquired after occupancy commences unless a Pet Agreement is completed and approved by the landlord in advance." In addition the Pet Agreement says "Failure by the tenant to comply with any of these terms and conditions will be considered a breach of a material term of the Tenancy Agreement between the landlord and the tenant. This agreement forms part of that Tenancy Agreement." The Tenant also signed the Mobile Home Rules and Regulations agreement on May 19, 2011 which says in the first sentence of the Pet section "All pets must be approved and registered at the office." As well the Tenant agreed that she received the "no cat" notice dated April 4, 2008. I find that the Tenant by signing these agreements and by acknowledging that she received the "no cat" notice she was fully aware of her obligations to the Landlord with respect to pet ownership in the Park. I also find that since the Tenant chose not to register her cat with the Landlord the Tenant broke the rules of the Park and the tenancy agreement.

Whether the Pet Agreement is a material term of the tenancy agreement was the focus of much of the discussion of the hearing. A test for whether a cause in a tenancy agreement is a material term of the agreement is whether a landlord or a tenant would agree to the clause or not agree to the clause if they were entering an agreement. If the cause is strong enough to stop a party from signing the agreement then it is a material term of the agreement. The owner of the Park testified under oath that he has not accepted tenants into the R.V. part of the Park because they owned cats and that existing tenants have left the R.V. part of the Park because they did not agree with the “no cat” rule in the R.V. part of the Park. I accept the Owner’s testimony and I find this indicate the clause is strong enough to be considered a material term of the tenancy agreement. I accept the Landlord’s testimony that this is the Landlord’s method of controlling pets in the Park and as such it is a material term of the tenancy agreement. The Tenant chose not to register her cat and the Tenant chose to ignore the “no cat” rule; therefore the Tenant breached a material term of the tenancy agreement by not registering her cat and the Tenant was in violation of the “no cat” rule in the R.V. part of the Park. Consequently I find that the Tenant breached a material term of the tenancy agreement and as a result I dismiss the Tenant’s application to cancel the One Month Notice for Cause dated August 30, 2011.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the filing fee of \$50.00 which she has already paid.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated August 30, 2011 to stand in effect and in full force.

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*.

Dispute Resolution Officer