



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The tenant confirmed that he received the landlord's 1 Month Notice posted on his door on October 24, 2011. The male landlord's representative (the landlord) confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on November 8, 2011. At the hearing, the landlord made an oral request for an end to this tenancy on the basis of the 1 Month Notice and an Order of Possession should the tenant's application be dismissed.

Issues(s) to be Decided

Should the tenant's application to cancel the 1 Month Notice be allowed? If the tenant's application were dismissed, should the landlord be issued an Order of Possession?

Background and Evidence

This month-to-month tenancy commenced on February 1, 2010. Monthly rent is set at \$595.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$297.50 security deposit paid on January 10, 2010.

The landlord entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by November 30, 2011, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided oral and written evidence that the tenant has been disruptive, including episodes of drunken yelling as he tried to enter his rental unit a number of

times over the past year. Both landlord's representatives testified that the tenant's behaviours have disturbed them and other tenants in the building.

The landlord and tenant provided oral and written evidence regarding three visits to the tenant's rental unit and to the rental property by the tenant's visitors (primarily the tenant's son) accompanied by dogs. The landlord entered into written evidence a copy of the landlord's Pet Policy Agreement. This policy signed by the landlord and the tenant included the following term:

*3) Dogs are **NOT** permitted anywhere on C Apts. Property. Not even with visitors.*

The parties agreed that the tenant has never kept a dog in the rental unit. The landlord maintained that the tenant's son's visitation to the rental property constituted a breach of a material term of the tenant's Tenancy Agreement and as such provided grounds to end this tenancy for cause.

Analysis

When a landlord issues a 1 Month Notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

With respect to the landlord's claim that the tenant has breached a material term of his tenancy agreement, it falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. The dispute resolution officer will look at the true intention of the parties in determining whether or not the clause is material.

In this case, the Pet Policy Agreement entered as an Addendum to the tenancy agreement included the following terms:

6) Violation of this agreement which is a good and material term of the Tenancy Agreement and shall be good cause for the landlord to issue a notice to end Tenancy.

A single violation of the addendum shall be deemed to be a serious violation and a material non-compliance of the residential tenancy agreement. It is understood and

agreed that a single violation shall be good cause for a notice to end tenancy being issued. In case of conflict between the Residential Tenancy Act and this agreement the provisions of the addendum shall govern. The Residential Tenancy agreement addendum is incorporated into the residential tenancy agreement executed this day between the tenant and the landlord.

The landlord did not enter into written evidence a copy of the remainder of the residential tenancy agreement. The tenant testified that he has asked for a copy of the residential tenancy agreement but the landlord has not provided the tenant with a copy of this agreement.

I find that the landlord's Pet Policy Agreement, the addendum referred to above, contains a clearly unconscionable term in asserting that this addendum takes precedence over the *Residential Tenancy Act* itself. No agreement signed between parties can supersede the legislation governing residential tenancies, the *Residential Tenancy Act*.

I also reject as unconscionable in this instance the provision that a single visit by a guest bringing a small dog to see a tenant constitutes a breach of a material term of this agreement. In this case, the landlord maintained that there were three incidents where the tenants' guests brought a dog with them to visit the tenant. On two occasions, the guest brought a dog into the building, the second of these in the pocket of his coat. On the third occasion, the dog exited the tenant's son's car and was allowed by the tenant's son to urinate on the lawn of the rental property. The landlords did not have specific dates for the other two incidents where the tenant's son's dog entered the tenant's rental unit, but referred to the tenant's own admission that these two incidents occurred. There appears to have been a seven-month gap between two of these incidents.

The tenant provided written evidence that the most recent incident involving a dog occurred on October 23, 2011 when his son brought a friend with him to assist the tenant move some furniture. The friend apparently "had a small puppy tucked into his jacket and dogs are not allowed in the building." The tenant stated that the dog did not enter the building and his son and his son's friend did not enter the building when told by the landlord that they could not enter the building with a dog. The tenant maintained that he did not know the puppy was coming and that it did not enter the building. The tenant also provided undisputed written evidence that after his son became aware that dogs were not allowed in the rental unit he never brought the dog back to the property.

I find that a zero tolerance policy might be appropriate if a tenant were to bring a dog into the building or enter his rental unit. However, a tenant cannot control with absolute

certainty whether a guest brings a dog onto the rental property. I find that the tenant has taken adequate and effective precautions to alert his son that he cannot bring a dog into the rental unit or to the rental property. Based on a balance of probabilities, I find that the landlord has not provided sufficient evidence to demonstrate that the incidents where the tenant's son allowed a dog to access the rental property constitute a breach of a material term of this tenancy.

The landlord also maintained that the tenant has breached a term of his tenancy agreement by feeding wild birds off of his balcony. In the absence of any copy of the residential tenancy agreement and based on the evidence presented, I do not find that this constituted a breach of a material term of the tenancy agreement. However, I direct the tenant to refrain from feeding birds from his balcony as this can cause disruption to the landlord and other neighbours.

I now turn to the landlord's claim that the tenant has significantly interfered with or disturbed the landlord and other tenants in this rental property. While the male and female resident building managers testified that they have received many complaints from tenants in this building with respect to the tenant's yelling and disruption when he tries to enter his rental unit, they did not produce letters of complaint from any of these tenants. They also failed to produce any witnesses at this hearing who are concerned about the behaviours that the landlord finds disruptive.

The landlord's representatives did object to various incidents including a time when the police brought the tenant home. The landlord testified that he offered to let the tenant into his rental suite on that occasion. The landlord testified that the tenant was inebriated and needed help in accessing his rental unit because the tenant is confined to a wheelchair due to his quadriplegia. The landlord entered other evidence where the tenant was yelling as he tried to enter his rental unit. The tenant said that this was caused by jamming his foot in the door causing severe pain. The landlord also alleged on another occasion that the tenant left a baked potato in an area of the building that required the landlord to remove it. The landlord said that these and other incidents disrupt his ability to provide service to the other tenants in the building. The landlord's representatives said that they have tried to be accommodating to the special mobility challenges that the tenant faces but that this building was not designed for a person with the severity of the tenant's mobility challenges.

Although I can appreciate that the landlord's resident building managers may find it time-consuming and upsetting to deal with the tenant on an ongoing basis, this on its own does not provide them with a reason to end this tenancy for cause. Many of the incidents that they included in their written evidence and in their oral testimony reflect

their aggravation with the continuation of this tenancy, but fail to meet the grounds of enabling them to end this tenancy for cause. For example, their claim that the police attend to the tenant's rental unit on occasion and escorted him home one night does not enable them to end this tenancy for cause. Other than the landlords' testimony, the landlords have failed to provide any evidence from anyone in this building that they find the tenant's behaviours interfere with or disrupt their tenancies. This failure to provide any corroborating evidence in a 40+ unit building suggests to me that the landlords and not the other tenants have issues with continuing this tenancy. While I sympathize with the landlord's concerns that noisy behaviours exhibited by the tenant have an impact on them and other residents in the building, I am not satisfied that the landlord has provided sufficient evidence to demonstrate that the tenant's actions and behaviours warrant an end to this tenancy at this time. For these reasons, I allow the tenant's application to cancel the landlord's 1 Month Notice with the effect that this tenancy continues.

Near the conclusion of this hearing, the tenant said that he is seeking alternate accommodations that may be more suited to his needs and circumstances. While this tenancy continues, I strongly advise the tenant to take measures to reduce the noise that he generates and the disruption that he causes during his ongoing tenancy.

As the tenant maintains that he does not have a copy of the residential tenancy agreement, I order the landlord to provide a copy of this agreement to the tenant forthwith.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice with the effect that this tenancy continues.

I order the landlord to provide a copy of the residential tenancy agreement to the tenant forthwith.

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: November 29, 2011

Residential Tenancy Branch