



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking more time to make an Application to dispute a one month Notice to End Tenancy, and requesting an order to cancel a one month Notice to End Tenancy issued for cause.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As a preliminary issue, the Tenant had requested more time to file this Application to dispute the notice to end tenancy. I find that the Tenant filed her Application on time, and therefore, no extension of time to file is necessary.

Issue(s) to be Decided

Should the one month Notice to End Tenancy be cancelled?

Background and Evidence

On October 31, 2011, the Landlord served the Tenant a one month Notice to End Tenancy for cause, with an effective end date of the tenancy set out as November 30, 2011 (the "Notice").

In the Notice the Landlord is alleging the Tenant has breached a material term of the contract and has not corrected it within a reasonable time after written notice to do so.

Agents for the Landlord testified that the Tenant has breached two material terms of the contract, that she has an unapproved pet and that she is smoking in the rental unit.

This tenancy began on October 1, 2011, with the parties signing a written tenancy agreement on September 28, 2011.

Paragraph 17 of the tenancy agreement states:

“17. Pets: Any pet, other than a budgie or canary, is not permitted to reside in the premise.”

The Tenant indicated her understanding of this by initialling within the box that contains paragraph 17.

On August 29, 2011, the Tenant completed an Application for Tenancy with the Landlord. Paragraph H of the Application contains the following statement,

“H. PETS: Initial here to indicate that you are aware the only pet accepted is Bird(s).”

The Tenant checked this box off.

The Application for Tenancy also contains a non-smoking clause, which apparently “grandfathered” in suites rented prior to March 2008. This clause states:

“I. SMOKING: This is a non-smoking facility in suites rented after March 2008 and all Common Areas.”

Paragraph 10 of the tenancy agreement repeats the above statement.

On or about October 2, 2011, a cat was seen coming out of the rental unit. The Tenant does not deny that this is her cat. Agents for the Landlord testified that the Tenant did not disclose to them or the Landlord that she had a pet cat before she moved into the rental unit.

Agents for the Landlord visited the Tenant on October 2, 2011, and explained to her she is not allowed to have a pet cat in the property. They explained she would have to move unless she removed the cat.

On October 12, 2011, a letter was hand delivered to the Tenant by two members of the Board for the Landlord. The letter explained to the Tenant she was not complying with the tenancy agreement as she had a pet cat. The letter explained her tenancy was in

jeopardy. She was warned that she had until October 31, 2011, to comply with the tenancy agreement or to vacate the rental unit.

Agents for the Landlord again visited the Tenant on October 18, 2011. At that time the Tenant denied having received a letter on October 12, 2011, and the letter was given to her again. Two Agents for the Landlord testified it was hand delivered to her on the 12th.

At the time of the visit on October 18, the Agents also realized that the Tenant was smoking cigarettes in the rental unit, despite the non-smoking clause in the tenancy agreement. Again the Tenant was warned she had until October 31, 2011, to comply with the tenancy agreement and to stop smoking in the rental unit and to remove her cat.

On October 18, 2011, the Tenant was also asked to complete a questionnaire regarding the rental unit. The Tenant answered the question "If I could change two things in the [rental building] they would be:" as follows:

"Less rules – this is not a nursing home!!" and "Treat res. More like a Tennent as this is a apt. Suite."

[Reproduced as written.]

In Response to the question "I would like to bring the following concerns about my suite or the [rental building] to the attention of the board:

"Small pets should be accepted with responsibility. It is a proven fact that seniors – handicap & etc. do much better – both mentely and phycl."

[Reproduced as written.]

The Agents for the Landlord further testified that the Tenant was aware of the no pets policy in 2005 as she had residing in the rental building at that time for several months.

The Landlord submits that they have worked hard over the years to make sure all renters in the building comply with the restriction on pets.

In reply, the Tenant testified she had quit smoking a month ago. She testified she had been promised a smoking room, but the Landlord changed this on her at the time she moved in, and gave her a non smoking room.

The Tenant submitted a letter from her doctor which sets out,

“[The Tenant] suffers from chronic health and heart issues and is under a lot of stress. Her cat is very important to her and is beneficial to her health and well - being. As her family doctor I feel it is in her best interests for her health to be able to keep her cat with her in her apartment.”

[Reproduced as written.]

The Tenant submitted a second letter from a different medical practitioner which sets out,

“[The Tenant] has had depression in the past and her pet has helped her overcome that. Please consider her allowing to keep her cat as she has done much better since having a pet.”

[Reproduced as written.]

Based on these notes, the Tenant argued that her cat is medically required by her.

The Tenant argued that the Application for Tenancy that she completed for the Landlord was not a binding contract.

The Tenant testified that she will not get rid of her cat.

Analysis

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

As the Tenant has testified she has quit smoking, she is no longer in a breach of a material term of the tenancy agreement, and I need not address this issue.

On the ground of the restricted pet, I find that the Notice is valid and should not be cancelled for the following reasons.

I find that by having a restricted pet the Tenant has breached a material term of the contract and has not corrected this after proper notice to do so was given to her by the Landlord.

Policy Guideline 8 to the Act explains that a material term is a term in the contract of tenancy 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 Guideline also sets out the following,

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

that there is a problem;

that they believe the problem is a breach of a material term of the tenancy agreement;

that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and

that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Landlord has proven the pet restriction was a material term of the tenancy agreement. I also find the Landlord has followed due process in this matter. In the letter of October 12, 2011, the Landlord indicated there was a problem with the Tenant having a pet cat and that the Landlord believes the Tenant is not complying with the tenancy agreement. The Landlord gave her two weeks to remove the cat and warned her that failure to remove the cat would result in the Landlord ending the tenancy. The Tenant has refused to remove her pet cat. This leads me to find the Tenant is in breach of the tenancy agreement.

I also note that the Tenant was required to read, and to acknowledge having read, two separate clauses in two separate documents that explained the restriction on pets.

Whether or not the Tenant is correct when she argues the Application for Tenancy is not a binding contract, I find the pet clause is a clear and unambiguous notice to her that there is a restriction on pets in the building. The Tenant acknowledged that she was aware of the restriction on pets when she checked off this box.

The Tenant also initialled the box in the tenancy agreement acknowledging that she had read paragraph 17.

I also accept the argument of the Landlord that the Tenant previously resided in the building and that the pet restriction was in place at that time as well.

These facts lead me to find that the Tenant was negligent by intentionally moving into the building with a pet she knew was restricted from the premises by the Landlord. In other words, I find the Tenant is the author of her own misfortune.

As to the argument of the Tenant that she needs the cat for medical purposes, she should have considered this prior to moving into a building that she knew restricted this type of pet.

I also note a pet cat does not meet the requirements of the *Guide Animal Act* SBC 1996, c. 177, which prevents a landlord from discriminating against a person with a disability who requires a guide animal.

Having found the Tenant has breached a material term of the tenancy agreement and the Notice is valid and should not be cancelled, I dismiss the Tenant's Application without leave to reapply.

During the course of the hearing the Landlord verbally requested an order of possession. Pursuant to section 55 of the Act, I must grant that request. I grant the Landlord an order of possession **effective at 1:00 p.m. on November 30, 2011.**

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 25, 2011.

Residential Tenancy Branch