

Decision

Dispute Codes:

CNC

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated November 1, 2011 purporting to be effective December 2, 2011. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had breached a material term of the tenancy that was not corrected within a reasonable amount of time after written notice to do so.

Issue(s) to be Decided

The tenant is disputing the notice and the issues to be determined based on the testimony and the evidence is whether the criteria to support a One-Month Notice to End Tenancy under section 47 of the *Act*, has been met, or whether the notice should be cancelled as requested by the tenant.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenancy began on November 1, 2008 and current rent is \$510.00. A security deposit of \$350.00 was paid.

The landlord testified that there was a material term in the tenancy agreement stating that the tenant could not have a pet in the unit and, in fact, was prohibited from even allowing a visiting pet in the unit..

The landlord testified that there have been many recent reports from other residents in the complex and from maintenance personnel that the tenant has had a dog in her unit. The landlord had submitted copies of the written complaints into evidence.

The landlord testified that the tenant has been repeatedly cautioned about keep this animal in the unit over the past three years of the tenancy, but the problem has repeatedly resurfaced as an issue of concern. The landlord submitted copies of a previous One Month Notice to End Tenancy for Cause that was issued in 2010 because of a violation of the pet policy. The landlord testified that this Notice was rescinded by the landlord based on promises from the tenant that the dog was gone forever and that she would never violate the pet policy again.

The tenant acknowledged that she was aware that no dogs were permitted in the unit, but explained that the first incident where the dog was found to be in her suite occurred because her estranged husband had suddenly dropped the family pet off without the tenant's permission. The tenant testified that after the landlord took issue with the situation, she was successful in finding a new owner for the pet. However, sometime later on the person to whom the tenant gave the dog, had a family emergency and found it necessary to return the dog to the tenant. The tenant submitted a letter from this individual explaining the circumstances. The tenant testified that she has now given the dog away permanently to a person who is willing to be the pet owner until the tenant has been approved for a unit with BC Housing. The tenant submitted a written statement from this individual confirming that she is now responsible for caring for the dog and is willing to keep it until the tenant moves into a pet-friendly complex with BC Housing. . The tenant stated that, although she had violated the pet policy more than once, it was not her fault in any way and it will never happen again. The tenant stated that her health is precarious and if her tenancy is terminated, she and her daughter will have no place to go.

The landlord stated that they were not willing to reconsider the One Month Notice to End Tenancy for Cause this time, due to the history of repeated violations and broken promises from this tenant. The landlord requested an Order of Possession.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act and the terms agreed to in a tenancy agreement are both enforceable through dispute resolution. Section 58 of the Act states that, a person may make an application for dispute resolution in relation to disputes over; (a) rights, obligations and prohibitions under this Act; and (b) rights and obligations under the terms of a tenancy agreement that (i) are required or prohibited under this Act, or (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In order to end a tenancy for cause under section 47 of the Act, a landlord would need to prove that the tenant was in violation of either the Act or the tenancy agreement.

I find that the landlord and tenant had entered into a written tenancy agreement that contained clear terms term prohibiting pets in the unit without the landlord's authorization. I further find that the tenant violated these terms.

With respect to the issue of whether the violations of these terms could be considered as a breach of a "material term", I find that this would require the landlord to satisfy the Dispute Resolution Officer that the following three components exist:

- There must be a clear term contained in the tenancy agreement
- This term must fit the definition of being "*material*"
- There must be a genuine breach of the material term.

Determining the materiality of a term, requires a focus upon the importance of the term in the overall scheme of the tenancy agreement and 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 in the contract, which the parties had both agreed from the start, was so important that any breach of that term would give the other party the right to end the agreement. The question of whether or not a term is material goes to the root of the contract.

In the situation before me, I find that the tenancy agreement had a specific addendum titled "Pet Policy", containing 10 separate terms relating to pets that required a tenant to read and sign. This addendum highlighted the fact that under the agreement between the landlord and this tenant, there were to be "*no pets at this time*".

I am satisfied that the term disallowing pets in the tenancy agreement was a material term in this tenancy. Having found that this particular term was a material term which was violated by the tenant, it must be determined whether or not the tenant had corrected the situation within a reasonable time after being requested in writing to do so.

I find that the dog controversy arose shortly after the tenancy began in 2008 and the tenant was given a chance , by the landlord, to correct the situation. Despite having been warned, the tenant violated the policy in 2010 but was once more granted leniency by the landlord based on the tenant's heartfelt assurances that the dog would never be permitted back into the unit. However, the same problem has recently arisen yet again. Although the tenant has assured the landlord that the dog has been permanently placed elsewhere, the landlord is not willing to negotiate with the tenant and is adamant that the criteria supporting an Order of Possession has been fully established.

Given the above, I find that the tenant's Application seeking to cancel the One-Month Notice to End Tenancy for Cause, is not supported by the facts and must therefore be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy.

Section 53 (1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Subsection (2) provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy under section 46 of the Act, the effective stated in the notice must be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, that rent is payable under the tenancy agreement .

In the matter before me, I find that the earliest date that a One Month Notice to End Tenancy for Cause served on November 1, 2011, could be effective under the Act would be December 31, 2011. Accordingly I find that the effective date on the Notice will be changed to December 31, 2011.

Conclusion

Based on the evidence and the testimony discussed above, I dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective Saturday December 31, 2011. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. 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: December 05, 2011.

Residential Tenancy Branch