



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OPC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 21, 2012 for:

1. An Order cancelling a Notice to End Tenancy for Cause – Section 47;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order to recover the filing fee for this application - Section 72; and
4. Other

The Landlord applied on February 28, 2012 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, it was noted that in a previous Decision dated January 18, 2012, the dispute between the Parties over the presence of the Tenant’s dog in the Tenant’s unit was determined not to be a breach of a material term of the tenancy as the “no pet” clause was determined not to be a material term. The Parties agree that following this Decision and on February 17, 2012 the Tenant was served with a Notice to End Tenancy for Cause, and the cause is stated as a breach of a material term. The Landlord states that the Tenant has breached a material term by having the dog in the unit. The Landlord states that the previous Decision only determined that the Landlord

failed to carry out the proper procedures to enforce compliance with a “no pet” clause and that the Landlord has now followed those procedures by sending the appropriate warning letters. It is noted that the Parties agree that the breach letters of the Landlord also warn the Tenant about having an unauthorized lock on the door, that this has been remedied and is no longer part of the cause for the Notice to End Tenancy.

Section 77 of the Act provides that a decision of the director is final and binding on the parties. Given the findings made in the previous Decision, I find that this matter has already been determined in a previous Decision, that the previous Decision is final and binding, and that as a result the Notice to end Tenancy is not valid, is cancelled and the Landlord’s application is dismissed. The tenancy continues.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The Tenant states that due to the Landlord’s actions in sending out warning letters, posting such letters to the Tenant’s door and serving the Tenant with a Notice to End Tenancy on a matter that has already been determined, the Tenant’s right to quiet enjoyment has been breached. The Tenant states that as a result of the Landlord’s actions, the Tenant is fearful of more letters being posted on her door, has lost sleep and has been stressed. The Tenant states that these actions have been particularly disturbing as her dog is now close to death and that her dog’s health has also been a worry for the Tenant. The Tenant is seeking a reduction in rent for two months in the amount of \$550.00 for each month as compensation.

The Landlord states that the Landlord is not harassing the Tenant and denies that the Tenant’s right to quiet enjoyment has been breached by the Landlord’s actions. The Landlord argues that the Landlord has been following procedure to end the tenancy and that there has been no intention to purposely bother the Tenant. The Landlord states

that the Tenant's claim for compensation is "utterly ridiculous" as the Tenant has not had any tangible losses.

It is noted that at this point in the Hearing, the Landlord stated that the Hearing was sounding "pretty one-sided". It was clarified to the Landlord that if the Landlord feels that full opportunity to respond was not being provided, the Landlord has full opportunity to do so and such opportunity was again offered to the Landlord. It was further clarified to the Landlord that if the "one sided" comment was in relation to the Landlord's displeasure with the finding made earlier in the Hearing, the Landlord was at liberty to seek a review of the decision as provided by the Act. The Landlord declined further opportunity to respond.

The Tenant states that the responses of the Landlord at the Hearing are an indication of the Landlord's attitude and responses to the concerns of the Tenant and the Tenant's repeated insistence to the Landlord that the dispute over the dog has already been determined.

Analysis

Section 28 sets out a tenant's entitlement to quiet enjoyment that includes a right to freedom from unreasonable disturbance. Section 7 of the Act further provides that if a landlord does not comply with the Act, the landlord must compensate the tenant for damage or loss that results. Although the Landlord argues that their actions to pursue the eviction of the Tenant was followed according to the rights and obligations of the Landlord, I find that pursuing an eviction on a basis that has already been determined as invalid, is not a reasonable exercise of the Landlord's rights and obligations. As a result, I find that the Tenant has established that the Landlord breached the Tenant's right to quiet enjoyment. Accepting that the Tenant reasonably experienced stress as a result of these actions, but taking into account part of the Tenant's emotional distress is in relation to the health of her dog, I find that the Tenant has substantiated a monetary award of half the amount claimed of \$550.00. The Tenant is also entitled to recovery of

the \$50.00 filing fee for a total entitlement of \$600.00. I order the Tenant to reduce rent payable for April 2012, by the amount of \$600.00.

Conclusion

I order the Tenant to reduce rent payable to the Landlord for April 2012, by the amount of \$600.00.

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: March 08, 2012.

Residential Tenancy Branch