



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RP, AAT, FF

Introduction

This hearing was scheduled to hear the tenant's application to cancel a Notice to End Tenancy; Orders for repairs and emergency repairs; Orders for access to/from the unit for the tenant or the tenant's guests. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant had not provided any written submissions or evidence pertaining to repairs that are required or lack of access to the unit prior to the hearing. The landlord's agent stated she was uncertain as to the repairs the tenant was seeking and did not understand the request for access. I found the tenant had not provided any indication on his application or in his evidence as to the nature of his repair requests or reason for seeking orders for access to the property. Therefore, I declined to hear these issues further and suggested the tenant put his requests in writing and give them to the landlord so as to afford the landlord an opportunity to respond to the tenant's requests.

In light of the above, the remainder of this decision deals with the tenant's request to cancel a Notice to End Tenancy only.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The tenancy commenced in June 2011 and the tenant paid a \$200.00 security deposit. The tenant is required to pay rent of \$400.00 on the 1st day of every month. The rental unit is a room with shared access to common living, kitchen, and bath rooms. The owner of the property does not reside at the residential property.

Neither party provided a copy of the tenancy agreement; however, both parties agreed that in the pet damage deposit section of the tenancy agreement the landlord wrote "N/A No pets".

In July 2011 the tenant requested permission to have two dogs live with him. The landlord requested and accepted a total of \$400.00 for a pet damage deposit. A receipt may have been issued for the pet damage deposit, or portion thereof, but the parties did not amend the tenancy agreement in writing or create any other document to record their agreement with respect to the tenant keeping the dogs in the unit. During the hearing the parties were in dispute as to whether the landlord had verbally given permission for the tenant to keep the dogs on a temporary basis only.

On January 15, 2012 the landlord's agent provided the tenant with a written letter advising the tenant he would have to find alternative accommodation for his dogs by January 30, 2012 and that if he failed to do so he would get an eviction notice on January 31, 2012. In the letter the landlord's agent referred to the tenant's medical needs and to other tenants having to look after the dogs when the tenant could not. The landlord's agent also states in her letter that she observed dog urine and feces on the floor on two occasions.

The Notice to End Tenancy provided as evidence indicates it was served on January 30, 2012 although the tenant stated it was actually January 29, 2012. The form is of an older version created by the Residential Tenancy Branch in 2005 and appears to be signed by the landlord's agent on January 13, 2012.

On the second page of the Notice the reason indicated for ending the tenancy is that the "Tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord has given written notice to do so." On the Notice to End Tenancy the landlord states that the tenant was given permission to keep the dogs for two months while his girlfriend was ill. On the Notice the landlord also states that the tenant is now ill and the dogs have been messing in the house.

The tenant submitted that other tenants living on the residential property have pets, including a cat and a rabbit. The landlord's agent testified that tenants in the shared accommodation units, such as the one occupied by the tenant, are not permitted to have pets but the landlord's agent acknowledged that she is aware of a cat and rabbit being kept by other tenants living in the shared accommodation units. The landlord's agent acknowledged that the no pet rule has not been enforced with respect to the cat and rabbit.

The tenant provided the following documentary evidence for this proceeding: the Notice to End Tenancy; a doctor's note dated July 21, 2011; the landlord's breach letter of January 15, 2012; and, letters from people who have been in the company of the tenant and his dogs.

The landlord's agent stated that the only documentary evidence provided by the landlord was a copy of the doctor's note also provided by the tenant.

Analysis

Where a landlord seeks to end a tenancy for cause the Act requires the landlord serve a Notice to End Tenancy in the approved form. The Notice served by the landlord on January 30, 2012 was not the current approved form. Rather, the Notice used by the landlord was a previous four page version adopted by the Director in 2005. Residential Tenancy Policy Guideline 18 and section 10 of the Act provide that if the landlord uses a Notice that deviates from the current approved form the form may still be found to be valid if it is not misleading and does not affect the substance of the information conveyed to the tenant.

In this case the Notice used by the landlord clearly communicated to the tenant that the landlord wishes to end the tenancy due to a breach of a material term under section 47 of the Act. Section 47 of the Act and the current approved form continue to provide such a means to end a tenancy for such a reason. The Notice used by the landlord also provides information to the tenant with respect to disputing the Notice which is consistent with the current provisions of the Act. Therefore, in this case, I find the older version of the Notice that was used by the landlord is acceptable and I proceed to consider the reason for its issuance and whether there is sufficient evidence to end the tenancy for that reason.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, that the tenancy should end for the reason(s) indicated on the Notice. In this case, the landlord bears the burden to prove the tenant breached a material term of the tenancy agreement. However, the landlord did not provide a copy of the tenancy agreement that would form the basis for reaching such a conclusion. Failure of the landlord to provide a copy of the tenancy agreement is in itself grounds to find the landlord has not met her burden and cancel the Notice.

Despite the aforementioned, since the tenant did not dispute the content of the tenancy agreement, and in an effort to avoid of a future dispute on this same issue, I have considered whether a having a pet constitutes a breach of a material term.

A material term is a term that is so important that the most trivial breach of that term gives the landlord the right to end the tenancy.

I accept the verbal testimony before me that the landlord has not enforced pet rules against other tenants in the building even though the landlord's agent is aware of pets in the building. Further, the tenant himself was given permission to have the dogs in the rental unit and required to pay a pet deposit by the landlord's agent and that satisfies me that the terms of tenancy changed even though the change was not recorded in writing. Without the new terms recorded in writing it is not surprising the parties are now in dispute as to what was agreed upon.

In light of the above, I find the landlord has not demonstrated that the no pet rule is material term. Therefore, I find the landlord is not justified in ending the tenancy for breach of a material term and I cancel the Notice to End Tenancy.

Although the landlord submitted that the tenant was given permission to have the dogs for two months I do not accept this is the reason the landlord issued the Notice when I consider the tenant sought permission in July 2011 and the landlord did not issue a breach letter until several months later mid-January 2012. If in fact the landlord had agreed upon a two month stay only it is reasonable to expect the landlord would have issued a breach letter much sooner than she did. I find it more likely that the landlord is motivated to have the dogs removed or the tenancy end due to concerns over dog urine and feces on the floor, as indicated in the breach letter, the Notice to End Tenancy and in the landlord's verbal testimony.

Both parties are informed that under section 32 of the Act the tenant is responsible for maintaining his unit and the areas he has access to in a manner that meets reasonable health, cleanliness and sanitary standards. The tenant is also responsible for repairing damage caused by the dogs and if the tenant does not repair the damage, or the dogs have caused significant damage to the property, the landlord may issue a 1 Month Notice to End Tenancy for Cause, in the approved form, for such reasons.

As the tenant was successful in this application, I award the filing fee to him. The tenant is authorized to withhold \$50.00 from a subsequent month's rent in satisfaction of this award.

As further information for the parties, the Act limits the amount a landlord may collect for a pet damage deposit to one-half month's rent. The deposit cannot be any greater than that amount even if the tenant has multiple pets. The Act also provides that any

overpayment of a deposit by the tenant is recoverable by the tenant. Such recovery may come in the form of a refund from the landlord or the tenant may deduct the overpayment from a subsequent month's rent. In this case, I find the tenant has overpaid the pet damage deposit by \$200.00.

Conclusion

The no-pet term in the tenancy agreement is not a material term. The Notice to End Tenancy has been cancelled and the tenancy continues at this time. The tenant has been authorized to deduct \$50.00 from a subsequent month's rent in order to recover the filing fee paid for this application. The tenant is also entitled to recover \$200.00 for an overpaid pet damage deposit.

The remainder of the issues indicated on the tenant's application have been dismissed with leave to reapply.

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 07, 2012.

Residential Tenancy Branch