

## **Decision**

### **Dispute Codes:**

CNC, CNL

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated April 23, 2012 effective May 31, 2012. Both parties appeared and gave testimony in turn.

The tenant's application had also indicated that they were disputing a Two Month Notice to End Tenancy for Landlord's Use. However, both parties confirmed that no such Notice was ever issued. The tenant stated that the landlord had told them that the landlord was going to move into the unit.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had been repeatedly late with rent, had breached a material term of the tenancy and had failed to pay a pet-damage deposit within 30 days as required.

### **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.

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 January 1, 2012 and current rent is \$1,000.00. A security deposit of \$500.00 was paid.

The landlord testified that the tenant failed to pay the rent on the date it was due for the months of January and April 2012. The tenant acknowledged that this did occur.

The landlord testified that there was a material term in the addendum of the tenancy agreement stating that only one pet per tenant was permitted in the unit. However, according to the landlord, the tenant violated the term by bringing a dog, a cat and a caged ferret into the unit and the tenant resisted the landlord's requests to remove one

of the animals, beginning in January 2012. The landlord stated that they do not know when the tenant finally complied with this request. The landlord testified that the tenant also declined to pay a pet damage deposit.

The tenant testified that the cat was removed in compliance with the landlord's request by the end of February 2012, so there was no violation at present and no justification for payment of a pet damage deposit.

The landlord testified that, in addition to the pet restriction, there was a material term in the addendum of the tenancy agreement stating that the tenant was required to, "*make the house available for real estate showings as it is for sale*". The addendum also required that the "*house should be clean and tidy*." The landlord testified that these were material terms in the contract because their main intent in renting was to market the home and find a buyer during the tenancy.

The landlord testified that the tenants impeded the realty showings on several occasions by denying access.

The landlord testified that the tenant did not keep the unit "neat and tidy", but had allowed the condition of the unit to deteriorate to the extent that the carpet was stained with what appeared to be urine from the pets. The landlord submitted photos showing obvious stains in numerous areas of the carpet. The landlord testified that, although they did not do a move-in condition inspection, the carpet had been professionally cleaned just prior to the tenants taking occupancy. The landlord testified that there was now an overwhelming odour of urine permeating the unit.

The landlord stated that this has created unsanitary conditions and also interfered with showings of the unit. The landlord stated that the house was shown 13 times by different agents to clients since January 2012. The landlord submitted a copy of the activity report received from their realtor containing comments of the agents after each showing. Many of the statements mentioned an offensive pet odour that influenced their potential buyers not to consider purchasing the home.

The landlord's position is that there is just cause to terminate the tenancy and the landlord believes that the tenant's application to cancel the Notice must be dismissed. The landlord requested an Order of Possession.

The tenant denied that they had been uncooperative with respect to the showings. The tenant testified that they made every effort to accommodate the agents, but restricted the times to the afternoons because of shift work schedules.

The tenant testified that none of their pets had been urinating on the carpeting and, in fact, the animals were not permitted to be on the carpeted areas at all. The tenant testified that nothing had occurred to cause the stains during their tenancy and stated

that any stains present on the carpet predated their move into the unit. The tenant denied that there was any offensive odours present in their home at all.

### **Analysis**

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable and also that the terms agreed to in a tenancy agreement are enforceable through dispute resolution. Section 58 of the Act states that, except as restricted under the Act, 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.

With respect to the issue of late rent, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

In this instance, I find that the landlord has established that the tenant did not pay the rent when rent was due on two occasions. However, in order to justify terminating a tenancy for cause for repeated late payment of rent, I find that the landlord must prove late payment of rent on three occasions.

With respect to the allegation that the tenant breached a material term of the tenancy agreement and failed to correct the situation within a reasonable period of time after receiving written demand to do so, I find that in order to end a tenancy under this section a landlord would need to prove that the tenant was in violation of a material term in the tenancy Agreement or the Act and failed to comply despite a written warning.

With respect to the issue of whether or not a violation 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.

A material term is a term in the contract, which the parties had both agreed from the start, was so important that the most trivial 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 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 the true intention of the parties

that was clearly established at the outset which will determine whether or not the clause is material.

In the situation before me, I find that this landlord and tenant had entered into a written tenancy agreement that contained a clear term limiting the number of pets in the unit. I accept that this constitutes a material term and I find that the tenant violated this term by bringing in a third pet. However, I accept that the tenant did correct the situation within a reasonable period by removing the third pet.

With respect to cooperating with realty showings, I accept that there was a material term in the agreement requiring that the tenant maintain the unit in a clean/tidy condition. However, any agreed-upon term in a tenancy contract must also comply with the Act.

Section 5 of the Act states that Landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Maintenance standards for rental units are covered by section 32 of the Act and the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, a tenant is not required to make repairs for reasonable wear and tear.

I find that the landlord is not at liberty, despite what the parties agreed upon, to impose a higher cleanliness or maintenance standard on the tenant that would exceed those required under the Act. However, I find that if the tenant has permitted pets to urinate on the carpet, this would definitely be a violation of section 32 of the Act. Should the tenant fail to comply in this regard, it could create a financial liability for the tenant with

respect to a possible claim for damages if the tenant failed to ensure that all traces of the urine contamination are removed when they move out.

The Act also requires the tenant not to impede the landlord's efforts to market the rental unit for sale. Section 29 of the Act states that a landlord can access a rental unit if the tenant gives permission at the time of the entry or if the landlord gives the tenant 24 hours written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

However this right is counter-balanced by section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to: (a) reasonable privacy; (b) freedom from unreasonable disturbance; (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; (d) use of common areas for reasonable and lawful purposes, free from significant interference.

With regard to the frequency and accessibility relating to realty showings, I find that neither party has significantly violated sections 28 or 29 of the Act.

Given the above, I find that the tenant's Application requesting that the One-Month Notice to End Tenancy for Cause be cancelled must be granted, as the landlord has not sufficiently proven that the tenancy should be terminated for cause.

That being said, the tenant is hereby cautioned to comply with the pet restrictions in the agreement and not to permit the animals to soil the carpet. The tenant should be aware that, if any accidents occur, the expectation is that the tenant must shampoo the carpeting and restore it to its original condition without undue delay for health and hygiene reasons. The tenant should also ensure that they do not unduly restrict the landlord's efforts to show the rental unit.

### **Conclusion**

Based on the evidence and the testimony discussed above, I hereby cancel the One-Month Notice to End Tenancy for Cause dated April 23, 2012.

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*.

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Dated: May 16, 2012.

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Residential Tenancy Branch