



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, LRE, SS, FF, O

Introduction

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

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. An Order allowing the tenant more time to make an application to cancel a notice to end tenancy – Section 66;
3. An Order setting conditions on the landlord's right to enter the unit – Section 70;
4. An Order for the service of documents in a different way than required by the Act – Section 71; and
5. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matter

Noting that the Tenant filed the application to dispute the Notice to end tenancy on April 23, 2012, I find that the Tenant was in time to make the application and that the request for more time does not require consideration.

Issue(s) to be Decided

Dos the Landlord have sufficient cause to end the tenancy?

Is the Tenant entitled to conditions placed on the Landlord's right to enter the unit?

Is the Tenant entitled to serve documents in a different manner?

Background and Evidence

The tenancy began on November 1, 2011 with monthly rent of \$1,000.00 payable on or before the first of each month. On April 21, 2012, the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") and there is no dispute that the Notice lists the following causes:

1. The tenant or a person permitted on the property by the tenant has:
 - a. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - b. Put the landlord's property at significant risk.
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord states that it was noticed in the beginning of April 2012 that the Tenant was having a guest at the unit and that the guest had a dog. The Landlord states that the dog is a pit bull that behaves aggressively and that on one occasion the dog behaved aggressively by growling at the Landlord while the Landlord was in the unit. The Landlord states that they live next door to the Tenants, that the Landlord has a fear of such dogs and that the Landlord has small children. The Landlord states that the dog has been seen both in the yard and in the home and that the dog is not on a leash. The Landlord states that the dog has been seen in the yard while the guest's car is not present. The Landlord further states that the dog is likely to cause damage to the unit. The Landlord states that the no pet clause is a material term of the tenancy agreement and that the Tenants knew about how strongly the Landlords felt about pets when signing the lease. The Landlord states that at the time of signing the lease the Tenant was showed damage to the unit cause by a previous tenant's pet. The Landlord sent a letter dated April 16, 2012 to the Tenant in relation to the dog being consistently present and asking the Tenant to consider the rental agreement.

The Tenant states that the dog has been over with the Tenants guest and that the dog has never been alone at the unit without its owner. The Tenant states that the dog is not aggressive and has worked at old folks homes. The Tenant states that the one incident

referred to by the Landlord about the contact with the dog did not include the dog being aggressive only that the owner was asked by the Tenant to hold the dog while the Landlord was there out of respect for the Landlord's fear of dogs. The Tenant states that the dog is a boxer and not a pit bull and that since the Tenant has small children herself, that the Tenant would not allow an aggressive dog to be present. The Tenant states that the Landlord was offered a pet damage deposit in case there was any damage to the unit but that the Landlord refused such a deposit. The Tenant states that as a single mother trying to find another rental unit, she requires the help of her friend to prepare and make the move and that the pet cannot be alone without the owner as the dog has separation anxiety when this occurs. The Tenant did not provide any evidence in relation to the application request for different service delivery methods or in relation to restricting the Landlord's access.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. A material term of a tenancy is a term that is so important that even the most trivial breach gives a party the right to end the tenancy. Whether or not a term can be found to be a material term includes consideration of awareness of the importance of the term at signing of the tenancy agreement.

Considering the evidence of the Landlord that the Tenant was shown previous damage by a pet, I find that the Tenant was aware of the serious nature of the no-pet term. I also consider that this term was set out additionally in an addendum to find that the no-pet term is a material term of the tenancy. Given the undisputed evidence of the Parties that the Tenant refused to keep the dog off the property or out of the unit following written notice to do so, I find that the Tenant breached a material term of the tenancy.

Accordingly, I find that the Notice is valid and, noting that the automatically corrected date of the Notice would be May 31, 2102, I find that the Tenant must move out of the unit by May 31, 2012.

As the Tenant did not provide any evidence, whether by intention or in error, in relation to the request for different service delivery methods or in relation to restricting the Landlord's access, I am unable to make any determinations on these claims.

The Tenants application is dismissed.

Conclusion

The Notice is valid and the Tenant must move out of the unit by May 31, 2012.

The Tenant's application is dismissed.

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: May 23, 2012.

Residential Tenancy Branch