



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, LAT

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated June 22, 2012, for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord comply with the Act or tenancy agreement and for an Order permitting the Tenant to change the locks on the rental unit.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenant’s applications for compensation for damage or loss under the Act or tenancy agreement, for an Order that the Landlord comply with the Act or tenancy agreement and for an Order permitting the Tenant to change the locks on the rental unit are unrelated to her application to cancel a Notice to End Tenancy for Cause and they are dismissed with leave to reapply.

At the outset of the hearing, the Parties confirmed that they were each served with the others’ documentary evidence and hearing packages (which include the Application for Dispute Resolution and Notice of Hearing). All of the documentary evidence has been reviewed by me. The Parties were also given an opportunity at the hearing to give their evidence orally, to have witnesses attend and to ask questions of the other party. All testimony was taken under oath or affirmation

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in September 2010. The Tenant paid a security deposit of \$437.50 at the beginning of the tenancy. On June 22, 2012, an agent of the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated June 22, 2012 by posting it to the rental unit door. The sole ground alleged on the Notice is that a

“security deposit or pet damage deposit was not paid within 30 days as required by the tenancy agreement.”

The Landlord's agent said that on or about March 28, 2012, the Landlord received a written and some verbal complaints about the Tenant's dog. The Landlord's agent claimed that this was the first time the Landlord became aware that the Tenant had a dog. On April 11, 2012 and again on April 12, 2012, the Landlord's agent sent the Tenant a letter advising her that she in contravention of her tenancy agreement and would have to remove the dog. The Landlord's agent said the Tenant refused to do so. Consequently, the Landlord's agent sent the Tenant a letter on May 7, 2012 and again on June 4, 2012 advising her that the Landlord would allow the dog but that the Tenant would have to pay a pet deposit by June 7, 2012. The Landlord's agent said the Tenant did not respond to these letters and did not pay a pet deposit and as a result, on June 22, 2012, she was served with the One Month Notice to End Tenancy for Cause.

The Tenant said her dog, a 100 pound Labrador Retriever, has been residing with her in the rental unit since the beginning of the tenancy. The Tenant said that when she viewed the rental unit prior to entering into the tenancy agreement, she advised the leasing manager that she had the dog and then signed an application. The Tenant said she was then advised by the leasing manager that her application was accepted and she was sent a copy of a tenancy agreement by fax or e-mail to sign and was asked to return it to an agent of the Landlord who later signed it and gave a copy to the Tenant. The Tenant relied on two witness statements of friends and acquaintances to corroborate her evidence that she had her dog when she moved into the rental property.

The Tenant argued that many of the Landlord's agents were also well aware prior to March 28, 2012 that she had a dog. The Tenant said she takes her dog for a walk twice a day and must walk down a corridor in the lower level past three security cameras to exit the building. The Tenant said maintenance rooms are also located on this level and the maintenance personnel frequently see her with her dog. The Tenant also claimed that maintenance personnel have entered her suite numerous times during the tenancy to make repairs and have seen either the dog or the large crate for him in her living room. The Tenant noted that she contacted a building manager responsible for doing annual inspections for bed bugs prior to her scheduled inspection to coordinate a time with him so that she could remove her dog while the “bed bug sniffer dog” was there. The Tenant said she held her dog in the corridor, visible to all, when the inspection was taking place.

The Tenant's advocate argued that the Landlord's correspondence to the Tenant never alleged that the Landlord first became aware of the Tenant's dog at the end of March 2012 as the Landlord's agent alleged but instead simply demands that the Tenant pay a pet deposit. The Landlord's advocate also argued that the Landlord provided no contradictory witness evidence from any of its other agents claiming that they did not know about the Tenant's dog. Consequently, the Tenant's advocate said this shows that the Landlord knew or ought to have known at the beginning of the tenancy that the

Tenant had a dog and that the Landlord is not now entitled under the Act to demand one.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Section 20(c) of the Act says that *"a landlord must not require a pet deposit at any time other than when the landlord and tenant enter into the tenancy agreement or if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property."*

The Landlord's agent claimed that the Tenant did not disclose that she had a dog and that she first learned about it in late-March of 2012 when she received complaints from other residents of the rental property. The Landlord's agent also claimed that on or about May 7, 2012 the Landlord agreed that the Tenant could keep the dog but required that she pay a pet deposit. As a result of the Tenant failing to pay a pet deposit, the Landlord's agent argued that she has grounds under the Act to end the tenancy. The Tenant argued that she has had her dog since the beginning of the tenancy and that this was known to the Landlord's agents since the beginning of the tenancy so that they are not now entitled to demand that she pay a security deposit.

I find on a balance of probabilities that the Tenant's dog has resided with her since the beginning of the tenancy. The Tenant said she disclosed the fact that she had a dog to the leasing agent for the Landlord and although the Landlord's agent in this matter denied that, she provided no witness evidence from the leasing agent to that effect. Similarly, the Tenant said prior to March 2012, maintenance employees as well as a building manager were well aware that she had the dog yet the Landlord said nothing about it. Although the Landlord's agent denied that the building manager knew about the Tenant's dog, she provided no witness evidence from the building manager to that effect. Consequently, I find on a balance of probabilities that the Landlord's agents knew or ought to have known well prior to March 2012 that the Tenant had a dog yet they did not make demands of her to get written consent to have it or to pay a pet damage deposit until late-March of 2012.

Although the Parties' tenancy agreement contains a term that the Tenant requires the written consent of the Landlord to have a dog, I find that the Landlord's agents either intentionally or inadvertently failed enforce that term of the tenancy agreement and they cannot (pursuant to s. 20(c) of the Act) seek to enforce it now. As a result, I find that there is insufficient evidence to support the sole ground for the One Month Notice to

End Tenancy for Cause dated June 22, 2012 and it is cancelled. As a further result, the Landlord may not require the Tenant to pay a pet damage deposit until such time as the Parties enter into a new tenancy agreement.

Conclusion

The Tenant's application to cancel a One Month Notice to End Tenancy for Cause dated June 22, 2012 is granted. The balance of the Tenant's application is 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: July 18, 2012.

Residential Tenancy Branch