



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, FF

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated July 24, 2012 purporting to be effective August 31, 2012. Both parties appeared and gave testimony in turn.

The One-Month Notice to Notice to End Tenancy for Cause, a copy of which was submitted into evidence, indicated that the tenant had breached a material term of the tenancy that was not corrected within a reasonable amount of time after written notice to do so, the tenant caused extraordinary damage to the unit and the tenant has not done repairs.

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 notice should be cancelled on the basis that the evidence does not support the causes shown.

Burden of Proof: The burden of proof is on the landlord to establish that the notice was justified.

Background and Evidence

The tenancy began in March 2009 and current rent is \$677.00. A security deposit of \$325.00 was paid.

The landlord testified that there was a material term in the addendum of the tenancy agreement stating that the tenant could not have a pet without the landlord's permission. A copy of the tenancy agreement was in evidence including "ADDENDUM A" in which the first item is :

"NO PETS ALLOWED WITHOUT PRIOR CONSENT BY OWNER AND OR AGENT" (reproduced as written)

The landlord testified that the tenant has 2 cats and has refused to remove them from the unit. The landlord testified that the cats have damaged the carpeting.

The tenant testified that she was given verbal consent to have the cats by the previous managers and that she was willing to repair any damage to the carpets. The tenant also pointed out that the landlord allows pets in other rental units in the same complex.

A previous hearing had been held involving these two parties on July 23, 2012, in which the tenant was successful in having a One Month Notice to End Tenancy for Cause for nonpayment of the pet damage deposit, cancelled. The dispute resolution officer made the following findings in that decision:

“I also find that the Tenant did not have sufficient evidence to prove she had permission to have pets in the rental unit. Although she testified that the property manager at that time “verbally” allowed her to have pets, this is contradicted by the written tenancy agreement.”

The dispute resolution officer concluded:

“However, I find the Tenant has pets in the rental unit without the Landlord's permission”

The landlord stated that the “no pets clause” is considered to be a material term of the tenancy and the landlord requested an Order of Possession.

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.

In order to end a tenancy under section 47 for cause a landlord would need to prove that the tenant was in violation of either the Act or the tenancy agreement.

I find that the landlord had entered into a written tenancy agreement with this tenant that contained a term prohibiting pets in the unit without the landlord's consent.

A previous finding was made by the dispute resolution officer presiding over the last hearing who concluded that this tenant had violated the provision in the tenancy

agreement prohibiting pets. Because of this previous finding, I am not at liberty to make a different finding than the one on record, nor do I have any authority under the Act to over-rule the previous decision.

With respect to the question of whether or not the term prohibiting pets would be considered a material term, I find that this requires 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.

The question of whether or not a term is material goes to the root of the contract and to determine the materiality of a term we must focus upon the importance of the term in the overall scheme of the tenancy agreement. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the term was a material term which the parties had both agreed from the start was of such importance that the breach of that term could give the other party a right to end the agreement.

I find that the tenancy agreement clearly highlighted the pet prohibition term, placing it as the first item in the addendum and underlining it for emphasis. I find that both parties had initialed the document at the bottom.

Given the above, I find that the term prohibiting pets in this particular agreement does qualify as a material term of the tenancy. I further find that in violating the term, the tenant failed to correct the situation within a reasonable time after written notice to do so.

Therefore, I find that the One-Month Notice to End Tenancy for Cause was justified and the tenant's Application requesting that the One-Month Notice to End Tenancy for Cause be cancelled is not supported by the facts. The tenant's application must be dismissed.

During the hearing the Landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a Landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy.

Accordingly I find that the landlord is entitled to an Order of Possession.

Conclusion

Based on the evidence and the testimony discussed above, I dismiss the tenant's application without leave. I hereby grant the landlord an Order of Possession effective Sunday, September 30, 2012. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: August 29, 2012.

Residential Tenancy Branch