



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Complete Residential Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on August 1, 2006 for a month to month tenancy for the monthly rent of \$545.00 due on the 1st of each month with a security deposit of \$272.50 paid;
- A copy of a warning letter from the landlord dated December 28, 2012 advising the tenant that despite the tenancy agreement stating he is not allowed pets the landlord allowed him to keep his first pet but that he did not seek approval from the landlord for his second pet and as such the landlord wants a pet damage deposit. The letter goes on to advise the tenant that his pets behaviour is not acceptable and the tenant has failed to pick up his pet's waste from the yard. The letter states ".....and as part of the agreement to allow dogs on the property it is required that their owner's pick up their waste immediately and dispose of it. The letter stipulates that the landlord has received reports of altercations with other residents of the property and that these actions are a breach of a material

term of the tenancy agreement and that further complaints may result in ending the tenancy;

- A copy of a letter dated January 4, 2013 indicating the landlord is attaching a 1 Month Notice to End Tenancy for Cause (the landlord clarified in the hearing that letter had been written previously but that the Notice was not issued or sent to the tenant until January 10, 2013; and
- A copy of a 1 Month Notice to End Tenancy for Cause dated January 10, 2013 with an effective vacancy date of February 28, 2013 citing the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits that they had received complaints from two residents in the residential property regarding this tenant. The first of these complaints was dated December 27, 2012 from a resident on the main floor; the second complaint from a resident on another floor was dated December 29, 2012; and the third complaint dated January 2, 2013 was from the resident on the main floor.

The tenant submits that he has since spoken with the resident from the main floor who had filed the complaints on December 27, 2012 and January 2, 2013 and that they had resolved their issues. The landlord confirmed that she has received communication from this resident acknowledging that they have resolved their issues.

The landlord asserts that she is still concerned however because the tenant did not take any action to resolve anything until he thought his tenancy would end and once he received the 1 Month Notice to End Tenancy for Cause.

On the issue of pets the landlord submits the tenancy agreement specifically prohibits the tenant from having any pets and that because he did not seek permission to have either the first dog or the second dog the landlord sees this as a breach of a material term of the tenancy.

The tenant testified that he was only providing a foster home for the second dog and that she is no longer with him. The tenant submitted a copy of an email dated February 12, 2013 from a dog rescue organization confirming that the second dog has been placed with another family who have adopted her.

The landlord submits that she has been responsible for this property for two years and that she was aware the tenant had one dog for the duration of this time, but she is unaware of when the tenant got the first dog.

The tenant submitted a letter from the former property manager who confirmed that he had given permission to the tenant to have a dog "whenever he was ready." The tenant could not confirm when he got his first dog. The landlord submits that even though he

may have had this approval at the time, circumstances may have changed and perhaps the landlord would not have wanted to give approval for the tenant to have a dog at the time the tenant got the first dog.

The landlord confirmed that there are other pets in the building, specifically that one other resident has a dog that she had when she moved in and another resident is getting a cat.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or
- b) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In relation to the landlord's position that the tenant breached a material term of the tenancy agreement I refer to the Residential Tenancy Policy Guideline #8 that defines a material term as "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement."

As the landlord has knowingly allowed the tenant to have a pet for at least 2 years without any issues and the fact that the landlord currently allows other parties to have pets in the building I find the landlord cannot rely on this tenant's possession of a pet to be a breach of a material term. Further, I am satisfied by the tenant's evidence he in fact did have the landlord's permission to have a pet prior to the current property management's tenure as agent for the landlord.

For the reasons noted above, I find the landlord has failed to establish the tenant has breached a material term of the tenancy. However, I caution the tenant that should he not remove his pets waste from the property in a timely manner, the landlord may have cause to end the tenancy for his failure to comply with requirements under Section 32 to maintain reasonable health, cleanliness and sanitary conditions of the residential property.

In relation to the landlord's position that the tenant has significantly interfered with or unreasonably disturbed other tenants, I find that while the landlord has referenced other complaints over the duration of the tenancy, the only complaints submitted into evidence involve incidences in 2010 and then the events of between December 28, 2012 and January 2, 2013.

As the complaints of 2010 are in relation to events over 2 years old with no evidence provided by the landlord of problems between then and December 28, 2012 I find the landlord cannot hold the events of 2010 to be relevant to end a tenancy in 2013. As such, I have considered only the events complained about on December 27, 2012 forward. I acknowledge the landlord's concern that the tenant only resolved issues with the one tenant after he was issued the Notice.

However, I find that since the landlord first informed the tenant of these problems on December 28, 2012 and then issued the Notice on January 10, 2013 (although she had written the letter she used to send the Notice on January 4, 2013) the landlord has failed to provide the tenant with time to resolve some of the issues between the tenants. I therefore find it reasonable that the tenant did not resolve the issues until after he received the Notice.

Further, I find from the actions of the tenant to resolve the differences between him and at least one of the complainants that the tenant has taken reasonable steps to ensure at least one of the residents who had complained about his behaviour no longer has an issue with it. For these reasons, I find the landlord has failed to establish that any disturbances or interference the tenant has caused to other residents is sufficient to warrant ending the tenancy.

Conclusion

For the reasons noted above I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on January 10, 2013 is cancelled and the tenancy remains in full force and effect. However, the tenant should be cautioned how seriously the landlord takes his behaviour towards other residents and that even one more similar incident may be considered sufficient cause to end the tenancy.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: February 20, 2013

Residential Tenancy Branch

