



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy that is misdated May 26, 2013 but was in fact served on the Tenant on April 26, 2013.
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on April 1, 2006. The present rent is \$644 per month payable on the first day of each month. The tenant paid a security deposit of \$272.50 at the start of the tenancy.

The tenancy agreement provides that there are to be no pets.

On December 28, 2012 the landlord served a warning letter on the Tenant that states the landlord has received a written letter of complaint that he now owns two dogs. It states that his residential tenancy agreement prohibits him from owning dogs but that the rental property has been a pet friendly house and Complete Residential "...did allow you to keep the one dog. Complete Residential should have been notified prior to you adopting another animal so that written consent could have been given and a pet deposit charged."

A one month Notice to End Tenancy dated January 10, 2013 was served on the tenant alleging that the Tenant had 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 provided evidence that she was responding to complaints from other tenants about the tenant's two dogs. The tenant subsequently gave up the foster dog he was caring for.

In a hearing dated February 20, 2013 the arbitrator cancelled the one month Notice to End Tenancy. In coming to that decision the arbitrator made the following findings:

- The agent for the landlord testified 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 was unaware 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 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.

The decision records the following:

“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 a letter dated February 20, 2013 the landlord purported to give retroactive approval for the tenant’s dog and demanded a pet deposit in the sum of \$310 to be paid no later than March 31, 2013.

The tenant testified he is on a fixed income earning less than \$1000 and the requirement that he pay this sum by that date was not possible.

On March 13, 2013 the landlord wrote the tenant a letter demanding the tenant pay the deposit. The tenant failed to respond by March 31, 2013. On April 3, 2013 the tenant provided the landlord with a letter that included 5 posted dated cheques dated April 25, 2013 in the sum of \$50, May 27, 2013 in the sum of \$50, June 27 2013 in the sum of \$50, July 27, 2013 in the sum of \$50 and August 27, 2013 in the sum of \$60 all of which total \$260. The landlord did not agree to this proposal and wrote a letter dated April 9, 2013 proposing the tenant pay the sum of \$130 on April 25 and \$130 on May 27, 2013. The tenant failed to respond. The tenant did not respond and on April 26, 2013 the

landlord wrote the tenant a letter enclosing the one month Notice to End Tenancy. The grounds is that the tenant has failed to pay a pet deposit within 30 days as required under the Residential Tenancy Act.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(a) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (1) (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

Section 20 of the Residential Tenancy Act provides as follows:

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) 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;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;

Analysis

Section 20(c) of the Residential Tenancy Act provides that where a tenant acquires a pet during the term of the tenancy a landlord must not require a pet deposit at any time other than when the landlord agrees that the tenant may keep the pet on the residential property. The landlord has taken the position that it provided the tenant with retroactive consent to have the pet in their letter dated February 20, 2013. In my view this is

inconsistent with the contents of the letter from the landlord to the tenant dated December 28, 2013 and the findings of fact of the arbitrator in the previous hearing. The letter states the landlord “did allow you to keep the one dog.” It further states that the landlord should have been notified about the second dog so that written consent could be given and a “pet deposit charged.” I infer from the letter that as of December 28, 2012 the landlord had not demanded a pet damage deposit for the tenant’s one dog.

The arbitrator in the previous hearing held

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.

The findings of fact from the previous arbitration are binding on the parties. The landlord’s permission to have a pet prior to the current management’s tenure is binding on the parties. This is consistent with the letter the present management gave to the Tenant dated December 28, 2012.

As a result I determined the landlord does not have a right to demand a pet damage deposit from the tenant at this time. Section 20 of the Residential Tenancy Act permits a landlord to demand a pet damage deposit at the time the landlord gives their consent to the pet. The landlord gave their consent to the tenant having a pet over two years ago. The new management of the landlord is bound by the actions taken by the previous management as it relates to consents given to the tenant. I do not accept the submission that the landlord can obtain the right to require a pet damage deposit by on the basis of giving retroactive consent when the consent was given over two years ago.

Determination and Orders

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. **As a result I ordered that the Notice to**

End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's Application for a Monetary Order in the sum of \$5000

The Application for Dispute Resolution filed by the tenant seeks monetary compensation in the sum of \$5000. He testified that he has been under great stress because of the landlord's actions and he is suffering adverse medical problems because of it. He testified the representative of the landlord is cold to him and very unpleasant and he is afraid to leave his rental unit for fear of running into the representative of the landlord. He submits the conduct of the landlord is unwarranted and in bad faith. The representative of the landlord denied the tenants' claim. She testified she is looking out for her client's best interest in protecting the property as she is obliged to do.

After considering all of the evidence I determined the tenant failed to prove he is entitled to a monetary order. The tenant failed to produce medical evidence to support his allegation. Further, I determined the tenant failed to prove that the landlord acted maliciously or in bad faith. The tenant failed to respond to the landlord's letters in a timely manner. The landlord was prepared to agree to a payment schedule although not to the one proposed by the tenant. The fact that the landlord was not correct in her interpretation as to whether she could demand a pet damage deposit does not make the landlord liable to pay the tenant compensation. **I ordered that the tenant's application for a monetary order be dismissed.**

The tenant has been successful with his application for an order to cancel the Notice but was not successful in his application for a monetary order. I determined the tenant is entitled to reimbursement of half of the cost of the filing fee. I ordered that the landlord pay to the tenant the sum of \$25 such sum may be deducted from future rent.

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 29, 2013

Residential Tenancy Branch

