



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MT, CNC, MNDC, RPP, LAT

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated May 13, 2013, purporting to be effective June 30, 2013. The tenant's application also indicated that the tenant was claiming monetary compensation, seeking an order to force the landlord to return the tenant's property and an order authorizing the tenant to change the locks to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Issues

Amend Application

The tenant had originally made application only seeking monetary compensation, plus an order to force the landlord to return the tenant's property and an order authorizing the tenant to change the locks to the rental unit. However, this application was amended to add a request to cancel the One Month Notice to End Tenancy for Cause and to grant the tenant more time to dispute the One Month Notice to End Tenancy for Cause.

The landlord testified that they were never served with the tenant's amended application.

I hereby allow the tenant's amendment as I find that adding this matter would not unfairly prejudice the respondent because I find that the landlord, having issued the One Month Notice to End Tenancy for Cause, would naturally already be familiar

with the reasons for the Notice and would certainly be prepared to justify the reasons that they put forth for ending the tenancy.

Allow More Time

The tenant requested more time to dispute the One Month Notice to End Tenancy for Cause.

Under section 47 of the Act, a landlord may terminate the agreement by giving notice to end the tenancy for cause, then a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case, the One-Month Notice to End Tenancy for Cause was posted on the tenant's door on May 13, 2013.

Section 90(d) of the Act deems that a posted document has been served on the 3rd day after it is left. I therefore find that the tenant received the One-Month Notice to End Tenancy for Cause on May 16, 2013.

I find that the tenants initiated their application on May 28, 2013, which was made two days beyond the 10-day deadline in which to file a dispute.

The tenants stated that they did not know what transgressions the landlord had based the Notice on. He tenants stated that they attempted to get more information without success prior to making an application for dispute resolution.

The tenants also pointed out that although they are actively looking for a place to move they must dispute the Notice because they do not know if they will succeed in finding a rental unit before the effective date of the Notice, which is June 30, 2013.

Section 66(1) of the Act gives an arbitrator the authority to extend a time limit established by the Act in exceptional circumstances.

I find that the tenant's application to dispute the Notice was made close to the statutory deadline and may have been delayed because the tenants were attempting to find out information from the landlord about the basis for the reasons given on the Notice.

I find that an extension is warranted and grant the tenants the two-day extension requested.

Sever Unrelated Issues

The Residential Tenancy Rules of Procedure, Rule 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 officer may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

In this instance, in addition to the tenant's request to cancel the One Month Notice to End Tenancy for Cause, the tenant's application indicates additional claims or disputes about several issues under various sections of the Act.

However, I find that the most pressing issue relates to the issue of whether or not the One Month Notice to End Tenancy for Cause should be cancelled.

Accordingly I hereby sever the portions of the application dealing the claim for monetary compensation, the order to force the landlord to return the tenant's property and the order authorizing the tenant to change the locks to the rental unit. I dismiss these issues with leave to reapply.

The hearing today will proceed with respect to the tenant's request to cancel the One-Month Notice to End Tenancy for Cause only.

Admitting Evidence

A preliminary issue arose with respect to the submission of evidence. An evidence package sent by the landlord was received by RTB for the file on June 11, 2013.

The tenant testified that they did not get any evidence at all from the landlord.

The tenant also testified that they did not submit their own evidence refuting the basis for the landlord's 1 Month Notice, because they were not able to get the detailed information upon which this Notice was based.

The landlord testified that their evidence package was sent to the tenant by registered mail on June 11, 2013 and this was confirmed by the tracking number.

Section 90(a) of the Act provides that a document served by served by mail, is deemed to be served on the 5th day after it is mailed. A Notice mailed on June 11, 2013 would be deemed to be received on June 16, 2013.

Rule 4 of the *Residential Tenancy Rules of Procedure* states that, any evidence upon which a respondent intends to rely in disputing the Application, must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding as those days are defined in the "*Definitions*" part of the Rules of Procedure.

However, in situations where the scheduled date of the dispute resolution proceeding does not allow the 5 day requirement to be met, then all of the

respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least 2 days before the dispute resolution proceeding.

The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "*at least*" then the first and last days must be excluded, and if served on a business, it must be served on the previous business day. Weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

In this instance, I find that the evidence submitted by the landlord would have to be received by the tenant on June 12, 2013 to comply with the requirement under the Act that the evidence be received "at least five days before the hearing," not June 16, 2013.

Therefore, I find that the evidence deemed to be received by the tenant on June 16, 2013, must be excluded.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?.

Background and Evidence

The tenancy began in September 2012 and current rent is \$795.00.

The One-Month Notice to End Tenancy for Cause indicated that the tenant had seriously jeopardized the health, safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk and 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 is disputing the Notice and is seeking to have it cancelled.

The landlord testified that, since the tenant moved in, there have been repeated incidents where the tenant placed or stored items in common areas, such as the hallway and the parking lot. The landlord testified that other residents have complained that these stored items block their access. The landlord provided the dates and details of the transgressions. The landlord described one incident in which the tenant became agitated and verbally abusive when some items found stored in a parking space not allocated to the tenant, were removed by the landlord. The landlord testified that that this required the attendance of police. The landlord testified that numerous warning letters have been sent to the tenant about the use of common areas for storage and the landlord has incurred costs to remove items blocking the fire exits.

The tenant argued that some of the discarded or stored items were placed in the common areas by others. The tenant pointed out that when the landlord notified them to remove their items in February, 2013, they complied immediately. With respect to the items stored in the parking stall, the tenant testified that no harm was caused by the stored property and it was not dangerous nor unsightly.

The tenant denied that they had received numerous warning letters from the landlord.

The landlord testified that the tenant attempted to store a trailer on the premises and, despite written letters warning the tenant he was violating the tenancy agreement and demanding removal of the vehicle, resisted removing it for over a month,.

The tenant argued that he was granted permission to bring the trailer on the property by a previous manager of the complex. The tenant pointed out that they did follow the landlord's instructions when told to remove the vehicle from the complex grounds.

The landlord testified that there is a material term in the tenancy agreement stating that the tenant must get approval and pay a pet damage deposit if the tenant wants to keep a pet in the unit. The landlord testified that the tenant did not disclose that they had a larger dog on the application for tenancy. The landlord testified that, once the animal was discovered, the tenant was warned that he must get approval and pay the pet damage deposit. The landlord testified that all animals living in the complex must be spayed or neutered and the tenant's dog is not neutered. The landlord stated that the tenant has not paid the deposit nor has the tenant applied for approval. The landlord believes that this is just cause to terminate the tenancy.

The tenant acknowledged he has not applied for approval to keep the dog and has not paid the pet damage deposit. The tenant argued that his veterinarian advised against the neutering operation. The tenant admitted that the dog is still living in the rental unit.

The tenant pointed out that the rules are not being applied equally to all residents and that they were being subjected to discriminatory comments by the rental complex staff.

The landlord denied that they discriminated against the tenant. The landlord stated that the rules and restrictions concerning pet ownership in the complex is considered to be a material term of the tenancy. The landlord requested an Order of Possession.

Analysis

With respect to the tenant's use of common areas to store items, I find that section 32 of the Act imposes responsibilities on both landlord and tenant for the care and cleanliness of the premises.

A landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, having regard to the age, character and location to make it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and property to which the tenant has access.

In this regard, I find that the tenant has repeatedly failed to comply with the tenant's obligations under section 32 of the Act and also interfered with the landlord's reciprocal responsibilities under section 32 requiring the landlord to maintain the common areas of the complex .

I further find that the tenant's personal use of common spaces in the complex impedes other resident's rights under the Act to use and enjoy these common areas. Section 28 of the Act protects tenant's right to quiet enjoyment including the use of common areas for reasonable and lawful purposes, free from significant interference.

With respect to the landlord's position that the tenant breached a material term in the tenancy and failed to correct the breach within a reasonable time after being given a written demand to do so, I find that section 6 of the Act states that the terms agreed to in a tenancy agreement are enforceable through dispute resolution.

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 parties had entered into a written tenancy agreement that contained terms dealing with responsibilities relating to the tenant's privilege of keeping a pet as part of their household. I find that the term governing pets in this tenancy agreement does qualify as a material term of the tenancy.

I find that the tenant did not disclose the fact that he had a dog from the outset. I find that this tenant ignored the tenancy rules and the landlord's cautions and the tenant continues to do so by keeping the pet in the unit without the landlord's consent and without paying the required pet damage deposit.

I further find that in violating the tenancy term, the tenant has 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 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.

Based on the evidence and the testimony discussed above, I dismiss the portion of the tenant's application seeking to cancel the One-Month Notice to End Tenancy for Cause without leave. The remaining issues on the application are dismissed with leave.

I hereby grant the landlord an Order of Possession effective Wednesday July 31, 2013. 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.

Conclusion

The tenant's application seeking to cancel the One-Month Notice to End Tenancy for Cause is not successful and is dismissed without leave, while the landlord is granted an Order of Possession. The remainder of the tenant's claims and requests in the application were severed and 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: June 19, 2013

Residential Tenancy Branch