



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aldergrove Kinsmen Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for:

1. More time to make an application to dispute a notice to end tenancy – Section 66; and
2. An Order Cancelling a Notice to End Tenancy for Cause - Section 47.

The Tenant and Landlords were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

The Landlord states that on September 12, 2013 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by placing the Notice in the mail box. The Tenant provided submissions in relation to the date the application was made to dispute the Notice. These submissions indicate that the Tenant’s advocate attended the Residential Tenancy Office to make the application on September 25, 2013 and it is noted that the application was signed on September 25, 2013. The submissions indicate difficulties encountered in the application process.

Section 90 of the Act provides that a document served by placing it on a door or other place is deemed to have been received on the third day after it was attached. Based on the Landlord’s evidence that the Notice was placed in the Tenant’s mail box on September 12, 2013, I find that the Notice was received on September 12, 2013.

Section 46 of the Act provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 66 of the Act provides that a time limit may be extended in exceptional circumstances. The Tenant had until September 25, 2013 to file the application and I accept that good faith efforts were made to file on this date and exceptional circumstances existed. I find therefore that the Tenant's application was filed in accordance with the Act.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The tenancy started on November 1, 2011. The Parties signed a written tenancy agreement with regulations attached as addendums.

The Landlord confirms that the reason for the Notice is that the Tenant breached a material term of the tenancy agreement. The Landlord states that the Tenant breached two material terms of the tenancy agreement.

The Landlord states that the Tenant breached the parking regulations by parking in front of the Tenant's unit contrary to the regulations. It is noted that the regulations provide for towing and fines for parking infractions.

The Landlord states that the Tenant also breached the pet regulations by having a cat in the unit. The Landlord states that on May 9, 2013 the Tenant was send a warning letter to rectify the breach in relation to the cat. The Landlord states that a unit inspection was conducted in June 2013 and that cat hair was seen at the front entrance, leading into the bedrooms and throughout the unit. The Landlord states that during this inspection the Landlord did not take photos or look for the presence of cat supplies such as food,

dishes or kitty litter as the unit was too messy to see anything clearly. The Landlord states that the cat was seen again by the Landlord in September 2013 a few days before the Notice was given to the Tenant. The Landlord states that the cat was seen in a bedroom window and described the cat as white with a tortoise shell chest. The Landlord states that the Tenant still has the cat in the unit. The Landlord did not provide any photo of the cat.

The Tenant states that while they did have a cat that following the receipt of the warning letter in May 2013 they gave the cat to extended family members living on a farm in Langley in mid May 2013. The Tenant provided the family name and location of this farm. The Tenant states that her children also come back from visits with their father who has both cats and dogs and track in the hair. The Tenant states that there are lots of cats in the neighbourhood and that on occasion other neighbours' cats and a dog have come into the Tenant's house while the door had been left open during the summer. The Tenant states that their cat was beige with a white chest and was the same cat in the photo the Landlord sent to the Tenant with the May 2013 warning letter. The Tenant states that she believed the Landlord's letter of June 2013 was in relation to the cleaning of the unit and that this took her until September 2013 to finish. The Tenant states that the Landlord has not carried out any follow up inspection following the inspection in June 2013.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. A material term of a tenancy agreement is a term that is so vital to the tenancy that the slightest breach of the term would require an end to the tenancy.

Given that the parking regulations provide for a towing and fines of a vehicle parked contrary to the regulations, I find that a breach of the term may be rectified or addressed

by means other than ending a tenancy. As such, this term cannot be found to be a material term of the tenancy.

I find the Landlord's evidence of a cat in the unit to be weak given the lack of any follow-up inspection of the unit prior to the issuance of the Notice, the lack of any photos of the cat and the difference in the description of the cat. I also find the evidence of the Landlord in relation to the presence of cat hair and a messy unit where little can be seen to be contradictory and not helpful in making a determination. Although the Landlord states that a cat was seen in the unit, given the overall weakness of the Landlord's evidence in the face of the Tenant's evidence of the move of the cat, its location out of the unit from mid May 2013 onwards and the presence of other animals in the children's life outside the unit, I find on a balance of probabilities that the Tenant removed the cat following the Landlord's warning letter, that the Tenant is not keeping a cat in the unit and that the Landlord has failed to substantiate on a balance of probabilities that the Tenant breached a material term of the tenancy agreement.

Given the above findings, I find that the Notice is not valid for the reasons stated in the Notice and that the Tenant is entitled to a cancellation of the Notice.

Conclusion

The Notice is cancelled and the tenancy continues. 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: October 21, 2013

Residential Tenancy Branch