



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC MNDC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To suspend or set limits on the landlord's right to enter the rental unit;
- c) An Order that the landlord comply with the Act; and
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated October 29, 2013 to be effective November 30, 2013 and the tenant confirmed it was served personally on them. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause should be set aside and the tenancy reinstated? Is the tenant entitled to recover the filing fee and damages and if so, in what amount? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 13, 2013 for a fixed term of six months, rent is \$1450 a month and a security deposit of \$725 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has two dogs (only allowed one);
- b) Breach of a material term of the tenancy agreement.

The landlord provided some letters in evidence from other tenants alleging unreasonable disturbance of their peaceful enjoyment by these tenants; however, they had not checked the boxes in the formal Notice to End Tenancy to indicate the cause as unreasonable disturbance. The tenants had a prior hearing on December 2, 2013 and, although the landlord was not successful, they vacated the premises on December 16, 2013 so an Order to set aside the Notice is no longer an issue.

However, the tenants are requesting compensation of \$500 for moving expenses as they claim the landlord's behaviour caused them to move after only two months of their six month lease had expired. They claim they moved into this unit in good faith and had to leave prematurely through no fault of their own.

A significant amount of documentary evidence was filed by both parties. According to the documentary and oral evidence, the landlords were on holiday in October so their daughter acted as agent and signed a tenancy agreement with the tenants. The tenancy agreement clause 11(d) states The Tenant is allowed the following pets and the tenant noted "Dogs"; it was initialled by the daughter because she said she thought it was just a typo and the discussion had been that one dog was allowed. The landlords returned and on the Condition Inspection Report at move-in, the landlord wrote "one dog and only one dog called Frank is permitted". The male tenant said he was tired after work and just signed this. The landlords say that he misrepresented the situation and said they had only one dog and the other dog was visiting. They claim the tenants also had a cat; there is no reference to cats on the tenancy agreement or the report. The landlord wrote a warning letter concerning the pets on October 25, 2013. The landlord submitted several letters from other tenants and the tenants submitted information claiming they are forgeries. Apparently this is the subject of an RCMP investigation. None of these tenants were present at the hearing to provide evidence.

The landlord submitted an Application for an early end to the tenancy; it was heard on December 2, 2013. In that hearing, the arbitrator concluded from the evidence that the Landlord provoked the tenant by repeatedly attending the unit without notice, refusing to leave when asked and serving a Notice to End Tenancy for unpaid rent on the same day that the rent was due.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. As the tenant has chosen to vacate the premises this is no longer an issue.

In respect to the tenant's claim for compensation of \$500 for invasion of their privacy and unreasonable disturbance by the landlord that caused them to vacate after only two months of their fixed term tenancy, I find the onus is on them to prove this on a balance of probabilities. I find they have satisfied the onus that their privacy was invaded and their peaceful enjoyment disturbed by the landlord contrary to section 28 of the Act. I find the weight of the evidence is that the landlord's agent signed a tenancy agreement that said they were allowed to have "dogs" on October 6, 2013. When the landlords returned from vacation a few weeks later, the weight of the evidence is that they constantly disturbed the tenants with unannounced visits (amounting to 6 by November 3, 2013), they went through their trash and took photographs, served them a Notice to End Tenancy because they had two dogs when their lease specified they could have dogs. They subjected them to an earlier hearing in an effort to end their tenancy early. The tenants base the claim of \$500 on an estimate of moving expenses plus boxes etc. and some time off work.

However, I find the tenants were not entirely free of fault in the whole situation as the male tenant signed a condition inspection report after the tenancy agreement that said there was only one dog and this may have caused some of the disturbance, confrontation and extra visits by the landlord because they saw two dogs and a cat. I find the tenant entitled, then, to part of their costs for moving and other expenses and I award them \$300 as total compensation.

Conclusion:

I find the tenants entitled to a monetary order for \$300 and to recover their filing fee for this application.

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: December 19, 2013

