Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MT; CNC

Introduction

This Hearing was scheduled to hear the Tenant's application for an extension of time to make an application to cancel a notice to end tenancy and to cancel the *One Month Notice to End Tenancy for Cause* issued January 23, 2014 (the "Notice").

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by registered mail sent February 4, 2014. It was also determined that the parties exchanged their documentary evidence.

The Landlord's agents testified that the Notice to End Tenancy was posted to the Tenant's door at 11:15 a.m. on January 23, 2014.

Preliminary Matters

The Tenant's first names on her Application for Dispute Resolution were amended to reflect the correct order of the names.

The Tenant applied for an extension of time to file her application to cancel the Notice; however, the Tenant filed her application on January 31, 2014 and therefore this portion of her application is not required. A tenant has 10 days to file an application to cancel a notice to end tenancy for cause, and in this case the Tenant filed her application within the required 10 days. This portion of her application is dismissed.

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on December 1, 2010. Monthly rent at the beginning of the tenancy was $499.00, due on the first day of each month. The Tenant paid a security deposit in the amount of $249.50 on November 26, 2010, and a pet damage deposit in the amount of $249.50 on November 29, 2010.

The Landlord's agents gave the following affirmed testimony and submissions:

- The Landlord is seeking to end the tenancy because the Tenant has a dog in contravention of clause 5 of the "additional terms" of the tenancy agreement (the "Pets Clause".
- The Landlord permitted the Tenant to have two cats at the beginning of the tenancy but did not agree that the Tenant could have a dog.
- The Landlord discovered that the Tenant had the dog on December 30, 2013, and gave the Tenant a warning letter the same day. A copy of the letter was provided in evidence.
- The Landlord provided another warning letter to the Tenant on January 3, 2014. A copy of that letter was provided in evidence.
- On January 7, 2014, the Landlord's agents met with the Tenant and confirmed that the dog was over the weight restriction to qualify for approval. The Tenant's dog weighs 40 pounds, which is in excess of the 12 pound weight limit allowed by the Landlord.
- The Pets Clause is strictly enforced. Other potential tenants have had to give up their dogs that exceeded the weight limit before they were accepted as tenants. Other existing tenants have also been denied permission to have dogs if the dogs were over the weight limit.
- On January 17, 2014, the Landlord gave the Tenant a final warning letter, a copy of which was provided in evidence.
- The Landlord's agents asked for an Order of Possession effective April 30, 2014.

The Tenant gave the following affirmed testimony and submissions:

- The Tenant got her dog on December 27, 2013.
- The Tenant was unaware that she had to ask permission to have a dog because the Landlord took a pet damage deposit.
- After the Tenant received the December 30th warning letter, she wrote to the Landlord stating that she didn't realize she needed written permission because she didn't have written permission to have the two cats at the beginning of the tenancy.
- Other tenants in the rental property have dogs, and some of them exceed 12 pounds in weight.
- The dog is a therapy dog and therefore qualifies for an exemption under the BC Guide Animal Act.
- The Tenant has not complied with the warning letters and still has the dog.

The parties gave additional testimony during the Hearing that was not relevant to the Tenant's application. Only the relevant testimony and submissions are outlined above.

Analysis

The Tenant submitted that her dog is exempt from the Pets Clause because the dog is a therapy dog. The Tenant relies on Section 18(3) of the Act. Section 18 of the Act provides:

Terms respecting pets and pet damage deposits

> ***18*** *(1) A tenancy agreement may include terms or conditions doing either or both of the following:*
>
> *(a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;*
>
> *(b) governing a tenant's obligations in respect of keeping a pet on the residential property.*
>
> *(2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 [limits on amount of deposits] and 20 [landlord prohibitions respecting deposits].*
>
> *(3) This section is subject to the rights and restrictions under the Guide Animal Act.*

The Guide Animal Act provides the following definitions:

> ***"guide animal"*** *means a guide animal*
>
> *(a) prescribed under section 8, or*
>
> *(b) for which a certificate has been issued under section 7*
>
> *if that animal is used by a person with a disability to avoid hazards or to otherwise compensate for a disability;*
>
> ***"person with a disability"*** *means a person who is apparently blind or otherwise disabled and is dependent on a guide animal or white cane;*

The Guide Animal Act does not currently recognize therapy animals under Section 8, nor did the Tenant provide evidence that a certificate had been issued under Section 7**.** Therefore, I find that the Tenant provided insufficient evidence that her dog qualifies for exemption under Section 18(3) of the Residential Tenancy Act.

When a tenant seeks to cancel a notice to end the tenancy, it is a reverse onus situation. In other words, the landlord must provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reasons provided on the notice to end tenancy.

In this case, the Notice provides the following reason for ending the tenancy:

> *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

In order for the Notice to be a valid notice to end the tenancy, the Landlord must prove the following three elements:

1. That the Landlord provided the Tenant with written notice of the breach;
2. That the Landlord provided the Tenant with reasonable time to correct the breach; and
3. That the Tenant breached a material term of the tenancy agreement.

Based on the documentary evidence and the testimony of both parties, I find that the Landlord provided the Tenant with written notice on three occasions:

- On December 30, 2013, the Landlord gave the Tenant 3 days to correct the breach.
- On January 3, 2014, the Landlord reiterated, in writing, that the Tenant must remove the "unapproved oversized dog" or the Landlord would issue a notice to end the tenancy.
- On January 17, 2014, the Landlord wrote the final letter, advising the Tenant, in part:

  "At this point you have still not taken appropriate action to remove your unapproved pet…… As previously stated you will be given your 30 day notice to end tenancy before the end of January if you are unable to follow our guidelines which are put in place for good reason."

I also find that the Landlord provided the Tenant with reasonable time to remove the dog from the rental unit.

What remains to be decided is whether or not the Pets Clause is a **material term** of the tenancy agreement.

A material term is a term that is so important that the most trivial breach of that term gives the other party the right to end the agreement.

The Pets Clause in the tenancy agreement states:

> *5. Pets:*
> *No pets will be allowed without the prior written permission of the Landlord. Mandatory spraying of the unit for flees is required upon move out.*

Based on the testimony and evidence provided, I find that the Landlord agreed to allow the Tenant to have two cats at the beginning of the tenancy and that the Tenant paid a pet damage deposit for the two cats. I do not find that the Landlord agreed to allow the Tenant to have a dog by virtue of accepting the pet damage deposit.

I find that the Pets Clause is a material term of the tenancy agreement. The Tenant alleged that the Landlord allowed other tenants to have oversized dogs. The Landlord disputed this and stated that in fact other tenants have been refused permission to have oversized dogs. The Landlord provided a copy of a letter in evidence (dated April 23, 2013, to another tenant) which supports the Landlord's submission that permission was denied. The Tenant provided no documentary evidence to support her claim that other tenants have been allowed to have oversized dogs. Therefore, I find that the term was a material term in the overall scheme of the tenancy agreement.

I dismiss the Tenant's application to cancel the Notice to End Tenancy.

Section 55(1) of the Act states:

> ***55*** *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
>
> > *(a) the landlord makes an oral request for an order of possession, and*
> >
> > *(b) the director dismisses the tenant's application or upholds the landlord's notice.*

I find that the Landlord is entitled to an Order of Possession effective April 30, 2014.

Conclusion

The Tenants' application is dismissed without leave to re-apply.

I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., April 30, 2014**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: March 21, 2014

Residential Tenancy Branch