



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied to cancel a 1 month Notice to End Tenancy for Cause (the "1 Month Notice").

The male tenant and an agent for the landlord (the "agent") attended the hearing. The hearing process was explained to the parties and an opportunity was provided to the parties to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant confirmed that they received the documentary evidence from the landlord prior to the hearing and had the opportunity to review that evidence prior to the hearing. The agent stated that they received the tenants' documentary evidence except were not able to view the included DVD. As a result, the tenants' DVD was excluded from the hearing as the DVD, which is digital evidence, was not served in accordance with the Rules of Procedure. Other than the tenants' excluded DVD noted above, I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The parties agreed that a fixed term tenancy began on February 1, 2005 and reverted to a periodic, month to month tenancy after January 31, 2006. A copy of the tenancy agreement was submitted in evidence.

The parties agree that monthly rent is currently \$868.66 per month and is due on the first day of each month. The tenants paid a security deposit of \$347.50 at the start of the tenancy. There was no pet damage deposit as part of this tenancy.

The tenant confirmed receiving a 1 Month Notice dated March 26, 2014 on March 26, 2014, with an effective vacancy date of April 30, 2014. The tenants disputed the 1 Month Notice on March 31, 2014, which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following one cause on the 1 Month Notice:

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

Regarding the cause listed above, the agent stated that the material term related to the tenants' dog in the rental unit. The agent spoke about a condition prohibiting dogs as part of the tenancy agreement, however, was unable to refer to a specific condition on the written tenancy agreement. The agent was unable to present a condition during the hearing which prohibited dogs or other pets as part of the tenancy agreement.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Once the tenants disputed the 1 Month Notice in accordance with the timeline set out in section 47 of the *Act*, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled, and will have no force or effect.

Regarding the cause listed above, the agent stated that the material term related to the tenants' dog in the rental unit. The agent spoke about a condition prohibiting dogs as part of the tenancy agreement, however, was unable to refer to a specific condition on the written tenancy agreement. The agent was unable to present a condition during the hearing which prohibited dogs or other pets as part of the tenancy agreement. Based on the above, **I find** that the landlord has provided insufficient evidence to support that the tenants breached a material term of the tenancy, as the agent was unable to refer to a specific condition in the tenancy agreement prohibiting dogs.

As the landlord has failed to prove that the 1 Month Notice was valid, **I cancel** the 1 Month Notice dated March 26, 2014.

I ORDER that the tenancy continues until ended in accordance with the *Act*. The 1 Month Notice dated March 26, 2014 is of no force or effect.

Conclusion

The 1 Month Notice dated March 26, 2014 has been cancelled and is of no force or effect. The tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 15, 2014

Residential Tenancy Branch

