



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0588848 B.C. Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to dispute a Notice to End Tenancy; to cancel a One Month Notice to End Tenancy; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The parties agree the tenant was served the One Month Notice by posting it to the tenant's door on April 02, 2014. In accordance with s. 90(c) of the *Act* this Notice is deemed to have been received by the tenant on April 05, 2014. The tenant therefore had 10 days in which to file her application to dispute the Notice. The tenant filed her application on April 11, 2014. As the tenant did file her application within the 10

allowable days the tenant does not require more time to file her application to dispute the Notice.

The landlord and tenant have had three other hearings; the first on October 21, 2013, the second on January 31, 2014 and the third on April 01, 2014. These hearing were in connection with the tenant's applications to cancel Notices to End Tenancy issued by the landlord.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this month to month tenancy started on June 01, 1998. At present the tenant pays a monthly rent of \$671.00 which is due on the 1st of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy (the Notice) for cause on April 02, 2014. The Notice has an effective date of May 01, 2014. The Notice gave the following reasons to end the tenancy:

1) The tenant or a person permitted on the residential property by the tenant has;

(iii) Put the landlord's property at significant risk;

2) The tenant has caused extraordinary damage to the unit/site or property

3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testified that:

- The tenant's suite is both a health hazard, and a fire hazard as it is extremely cluttered;
- The bedroom has boxes stacked up floor to ceiling and is a fire hazard;
- The tenant was seen walking around the building with a snake around her neck in 2007;
- The tenant has unauthorised pets in the building when the tenancy agreement stipulates that a tenant must have written permission from the landlord to keep pets;
- There was a strong odor in the unit originating from either cat litter or urine in the carpet;
- The tenant's carpet is contaminated with cat urine and feces, when an inspection was done with the landlord and a potential employee of the landlord on August 31, 2013, cat feces was tramped out of the tenant's unit on the landlord's shoes into the common hallway of the building;
- The landlord was refused entry to the tenant's unit for a fire inspection and for a person to take samples of the carpet to detect the presence of urine despite Notice being posted in advance on December 13 for an inspection on December 16, 2013;
- The tenant indicated that the python is in a tank and the tank is not secured;
- They believe that the tenant is a hoarder, and due to this it puts the landlord's property at risk and the tenancy should be ended.

The landlords testified that they took over as owners of the building in August 2013 and found the tenant had breached the tenancy agreement by keeping two cats and a snake they believe to be a python. The tenant was sent a breach letter concerning the pets on November 20, 2013.

The landlord testified that the tenant has allowed her cats to urinate and defecate on the carpet which has put the landlord's building at significant risk due to the damage this

potential may cause to the subfloor and the drywall. The landlord testified that they are trying to renovate the building and the tenant's actions allowing her cats to urinate and defecate on the carpets has potentially caused extraordinary damage to the unit. The landlord testified that this damage cannot yet be assessed as they cannot get into the tenant's unit.

The landlord refers to a letter provided in evidence from a person that was going to be employed by the landlord who entered the tenant's unit with the landlord during his orientation for the job which he later declined due to health reasons. The landlord testified that this person accompanied the landlord to the tenant's unit on August 31, 2013 and has written to state the condition the tenant's unit was in. This letter also refers to the landlord tracking cat feces out of the tenant's unit into the hall on the bottom of the landlord's shoes.

The landlord testified that in early 2013 the tenant allowed a snake to escape from her unit and it was found at the screen door of another unit. Those tenants had two small children and the risk is considered to be great as snakes such as this should not be allowed to reside in apartment buildings. The landlord refers to a case in Halifax where a snake got out and killed two small boys in an apartment building.

The tenant testified that her unit is not unsafe. The tenant testified that her second bedroom is used for storage as the storage area in the building has mould. The tenant testified that her belongings are not stored floor to ceiling and she is not a hoarder. The tenant testified that the hallway is not cluttered and there are two shelves for shoes and one for keys, there is also a dresser with the tenant's knick knacks on it.

The tenant testified that the person who came to her unit in August 2013 with the landlord did not go any further than the hallway in the tenant's unit and could not have seen the dining room and kitchen from his position in the hall and he did not go into the bedrooms. He was only able to see a small portion of the tenant's living room from his position in the hallway and they discussed the fact that the tenant had some recycling

out which was waiting to be removed. The tenant disputes the comments stated in this letter. The tenant also disputes that the landlord could have got any cat feces on his shoes from the tenant's unit. The tenant testified that she regularly vacuums and cleans her carpets and walks around her unit with bare feet. The tenant testified that her cats use a litter box which is emptied every day. The cat litter in the boxes smells of laundry detergent and bicarb of soda.

The tenant testified that the reason she did not allow the landlord entry to her unit on December 16, 2013 was because the landlord did not comply with the form and content required under the *Act* for the Notice of entry. The tenant reads out from the Notice at the hearing as neither party provided a copy of this Notice in documentary evidence. The tenant testified that the Notice did not give a correct time of entry but rather left a two day window of four hours a day. The landlord appeared on the second day after the tenant had waited in for two days. The Notice did not give the correct reason for entry, the Notice said the landlord WG was coming to do an inspection. There was no Notice of a fire inspection or another person coming to the tenant's unit. The tenant testified that when the landlord arrived at her door with another person the tenant read the Notice out to inform them why she was refusing them entry.

During the hearing one of the landlords became angry and frustrated and started using profanities and threatened action against the Residential Tenancy Branch with his lawyer if we do not take action to remove the tenant from the unit. The landlord stated that the Residential Tenancy Branch must take responsibility for the snake if we do not let the landlord evict the tenant. The landlord was cautioned about using profanities during the hearing. The landlord continued to utter profanities and then both landlords left the conference call. The conference call continued in the landlords' absence.

The tenant testified that she does not wonder around the building with her snake. The tenant testified that this is her third snake she has had at the building and the day the tenant was seen with the snake was the day she first brought this snake into the building.

The tenant testified that the snake tank is secure and she has no idea how the other snake got out of the tank when the tenant was not at home. The tenant suggests someone entered her unit and let the snake out.

The tenant testified that she has always been allowed to have pets in her unit by the previous landlord throughout her tenancy. The tenant testified that the landlord's evidence shows that the previous landlord knew the tenant had pets. This has never been an issue until now and the previous landlord has never asked for a pet deposit and never informed the tenant that permission in writing must be gained. This only occurred when this landlord bought the building last year. The tenant testified that as she has had her pets for so long without concern from the previous landlords then they have given the tenant implied consent to keep the pets. The tenant testified that she is trying to sell her snake in order to put the landlords' mind at rest about safety issues; however, it is not illegal to keep a snake in her unit.

The tenant testified that she is a responsible pet owner. The tenant testified that someone called the SPCA about the tenant and someone from that that society came to the tenant's unit to inspect the tenant's pets and unit. That person had no problem with the way the tenant looked after her pets or the condition of the unit. The tenant testified that whatever was on the landlord's shoes did not come from the tenant's unit.

The tenant testified that due to the constant harassment of the landlord by serving all these Notices to End Tenancy to the tenant, the tenant feels that this has impacted on her quiet enjoyment of the rental unit. The tenant testified that the landlords are determined to evict the tenant as they want the unit. The tenant seeks a Monetary Order for \$2,000.00 in compensation for a loss of quiet enjoyment.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the

tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

Therefore, with regard, to the first reason given on the Notice that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; It is my decision that the landlord has not shown that the tenant has not maintained her unit, that the tenant has allowed her cats to urinate or defecate on the carpets in her unit or that the tenant is a hoarder and the contents of her unit pose a fire risk. Furthermore, I find the landlord has not shown that the snake tank is not secured or that this snake, which incidentally the tenant is attempting to sell, is a risk to other tenants or their families. Consequently, I cannot uphold this reason given on the Notice.

With regard to the second reason given on the Notice that the tenant has caused extraordinary damage to the unit/site or property, It is my decision that the landlord has insufficient corroborating evidence to show that the tenant has caused extraordinary damage to the unit by allowing her cats to urinate or defecate on the carpet. The tenant has contradicted the landlord's testimony and the letter provided in evidence from a third party who attended at the tenant's unit in August 2013. The tenant has testified that the person accompanying the landlord could not have possibly seen all the areas in the tenant's unit he has alluded to in his letter as he only accessed the tenant's hallway and did not go into the rest of the unit. As the landlord did not call this person to give sworn testimony during the hearing and submit to cross examination by the tenant and the letter provided was not sworn before a Notary I can place very little weight on the contents of that letter particularly as it is disputed by the tenant. Consequently, due to insufficient evidence from the landlord concerning this matter I cannot uphold this reason given on the Notice.

With regard to the third reason given on the Notice that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable

time after written notice to do so; I find the tenancy agreement does have a clause that stipulates that pets are not allowed unless written permission has been obtained from the landlord. I further accept that the landlord did send the tenant a letter concerning these pets when they became aware of them in November, 2013. However, the landlord is attempting to enforce a provision of the tenancy agreement since they became the landlord, when the previous landlord had knowledge of the tenant having pets since 1998. In some cases a landlord may know of a pet being kept by a tenant in contravention of a pet's clause and do nothing about it for a period of time. The landlord's mere failure to act is not enough to preclude him or her from later insisting on compliance with the pet's clause. However, a delay may indicate that the pet's clause is not considered by the landlord to be a material term of the tenancy agreement.

As well, if a landlord is aware of the breach of a pet's clause and does not insist on compliance and does something which clearly indicates that the pet is acceptable, the landlord may be prohibited from ending the tenancy for that breach. This is called "waiver". It is important to note that it is not a waiver of the pet's clause itself, but only a waiver of the landlord's right to terminate the lease for that particular breach.

While I have no evidence from either party to show that the previous landlord did anything to indicate that it was acceptable for the tenant to have pets, as the previous landlord has allowed the tenant to continue having her pets for a period of at least 15 years I would deem this to be implied consent and as such is not a material breach of the tenancy agreement.

In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenant's claim for compensation for a loss of quiet enjoyment due to the landlords alleged harassment in continually attempting to evict the tenant; I refer the parties to a similar case dealt with in the Supreme Court of Whiffin v. Glass & Glass

(July 26, 1999). In this case it was held that attempts by the landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenant's remedy would be to dispute the Notice ending the tenancy once given. Consequently, in this matter I find the landlord is entitled to threaten eviction even if they are wrong and the tenant's application for compensation due to these Notices is dismissed.

As the tenant has been partially successful with this claim, I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord and may deduct that fee from her next rent when it is due and payable.

Conclusion

The tenant's application to cancel the One Month Notice to End Tenancy is allowed. The Notice to End Tenancy for Cause dated April 01, 2014 is cancelled and the tenancy will continue.

The tenant's claim for compensation is dismissed without 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 05, 2014

Residential Tenancy Branch

