



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction:

The tenant applies for resolution of a dispute in the tenancy at the above noted address, and requests an order to cancel a Notice to End Tenancy, which alleges that:

- the tenant or a person permitted on the residential property has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord applies for an Order of Possession.

Issue(s) to be decided:

Should the Notice to End Tenancy be cancelled, or has the landlord established grounds to end this tenancy?

Background and Evidence

1. This tenancy began August 15, 2013. The monthly rent is \$1,138.00, due on the 1st day of each month. The tenant rents the top floor of a house. Other tenants rent the main floor, and the owner (mother of the landlord) resides on the basement floor.
2. The tenancy agreement permits the tenant to have one cat. The tenant enjoys having a cat, and finds it therapeutic to have one in her home. Shortly after moving in, however, the tenant brought two cats to the premises. The landlord verbally consented to the second cat at that time. The house itself proved problematic as it permits significant sound transfer, and the main floor tenants became disturbed by the night time play of the two cats. The tenant took some steps to reduce the noise, such as keeping the cats out of her room at night (which was directly above the main floor tenant's bedroom), removing toys that were noisy, and installing some carpeting.
3. The main floor tenants continued to complain that their sleep was being disrupted. They attempted to talk to the tenant, and the landlord provided the tenant with their complaints and warnings, and tried to negotiate a resolution.

The tenant viewed these attempts to find a peaceful resolution as forms of harassment, and chose to not speak any longer to the main floor tenants.

4. The tenant was advised verbally at some point by the landlord to remove the second cat, and on May 30, 2014, the landlord wrote to the tenant to advise that having the 2nd cat was a breach of her agreement. Within 2 weeks of the written notice, the tenant found other homes for the two cats, and brought another older cat to her home. The tenant contends this cat is more sedate than the previous ones, and she does not believe there is still any disruption that occurs.
5. In frustration over being hounded by both sets of tenants over this issue, the landlord issued a one Month Notice to End Tenancy on June 26, 2014.

Analysis:

A reading of the tenancy agreement makes it clear that the tenant is permitted to have one cat in the premises. The presence of a second cat was at all times a breach of that agreement, but for a period the landlord effectively waived the enforcement of that provision, and permitted the tenant to keep a second cat. It was within the landlord's right at any time to require the tenant to adhere to the terms of the agreement and have only one cat, and in fact this occurred when the landlord requested verbally that the second cat be removed. This was reinforced by the landlord's indication in writing that the tenant was in breach of the agreement. Had the tenant not removed one of the cats, there would have been grounds to end the tenancy at that point, but the tenant did remove the second cat within two weeks of this notice of a breach of the agreement. I find that period to be a reasonable period in which to rectify the breach, and the landlord therefore does not have grounds to end the tenancy based upon the "material breach" component of the Notice to End Tenancy.

The more serious issue is the fact that the main floor tenants have had their sleep disrupted by the cats. Disappointingly for the landlord, the tenant has seemed more concerned about preserving her rights to having a cat in her home, than concern as to how the noise of the pet affects others. Nevertheless, it is the case the steps taken by the tenant, while seemingly reluctant, have been sufficient and reasonable under the circumstances. It is not the tenant's fault and out of her control that the home allows for significant noise transfer. As noted above, she has taken steps to mitigate the noise of the cats and the disruption to the other occupants. Under the circumstances, I find these steps to be reasonable.

I accept that the main floor tenants have been sleep deprived and disturbed by the two former cats, but it has not been established that they were "unreasonably" disturbed, to the point contemplated under the Residential Tenancy Act that would permit an eviction. Similarly, while the landlord wishes the tenant would be willing to deal with the issue

amicably and peacefully, there is no requirement under the Residential Tenancy Act that a tenant must participate in meetings with other occupants to address these issues, and indeed the tenant has been bothered by any face-to-face meetings with these other parties.

Both parties have used strong language (such as “harassment”) in describing the conduct of the other. There is no basis for such a finding.

I have determined that the landlord has failed to establish sufficient ground to end the tenancy of the tenant. The Notice to End Tenancy is therefore ordered cancelled, and the tenancy shall continue.

I add that I have accepted at face value the tenant’s testimony that the new cat in the premises has caused no noise problem for the main floor tenants. It remains the tenant’s responsibility to ensure that this continues, and that noise reduction measures remain in place to make the home as peaceful and quiet at night as possible.

I further add that it always remains an option for the landlord to insulate and or install wall to wall carpet throughout the upper floor, to further reduce sound transfer between the floors, should the lower tenants continue to complain.

I decline to make any order concerning the filing fees of either party. The landlord has been unsuccessful in her claim, while the tenant was in fact in breach of the tenancy agreement for a period, by keeping the second cat even after being told verbally that it was no longer permitted.

Conclusion

The subject Notice to End Tenancy is cancelled. 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: August 28, 2014

Residential Tenancy Branch