



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seville Management & Leasing and Coldwell Banker Premier Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, ERP, RR, OLC, MNDC, LAT, LRE

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, an order allowing a reduction in rent, for an order requiring the landlord to comply with the Act, a monetary order for money owed or compensation for damage or loss, an order authorizing the tenant to change the locks to the rental unit, and an order suspending or setting conditions on the landlord's right to enter the rental unit.

The tenant, her advocate, and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the Act, repairs, a rent reduction, monetary compensation, and suspending or setting conditions on the landlord's right to enter the rental unit are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

Background and Evidence

I heard undisputed evidence that this tenancy began on November 1, 1978, and current monthly rent is \$1045. The tenant submitted that she did not pay a security deposit and the landlord submitted that a security deposit of \$100 was paid.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated September 17, 2014, was delivered by attaching it to the tenant's door on that date, listing an effective end of tenancy on October 20, 2014. A notice to end the tenancy is not effective earlier than one clear calendar month before the next rent payment is due. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to October 31, 2014.

The cause listed on the Notice as the reason for which the landlord is seeking to end this tenancy is 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.

The landlord's relevant documentary evidence included two written warning notices to the tenant, a copy of a document entitled "Application for Rent of Suite" ("Application"), and another document entitled "Conditions of Tenancy" ("Conditions").

In support of their Notice, the landlord submitted that the tenant is now allowing a dog to live in the rental unit and that the residential property does allow pets. In explanation, the landlord submitted further that the dog belongs to the tenant's caregiver, her son and advocate here, and is not a registered therapy dog.

The landlord submitted that they have received complaints from other tenants in the 40 unit building as they were not allowed a dog, and as a result, the landlord issued a written notice to the tenant to have the dog removed. The landlord submitted further that clause 4 in the Conditions prohibits the tenant from having an animal or pet kept on the premises.

In response, the tenant's advocate stated that he now lives in the rental unit as a caregiver and has the dog living there as a form of therapy and security for the tenant.

The tenant's advocate disputes that there is a written tenancy agreement, as the relevant document here is an application, and that the tenant has never received a copy of the Conditions.

The tenant's advocate further disputes that the term referenced by the landlord is a material term as there are other residents in the residential property who have cats and as the tenant had a cockatiel when she first moved into the rental unit in 1978.

Landlord's rebuttal-

The landlord submitted that the "Conditions of Tenancy" were attached to the back of the "Application for Rent of Suite."

In response to my question, the landlord submitted that the term prohibiting pets was a material term simply because of its inclusion in the list. The landlord also confirmed that other terms included in the list would possibly not be enforced by the landlord through eviction if the breach was not severe enough.

Tenant's surrebuttal-

The tenant's advocate pointed out that there are numerous BBQ grills in the other rental units, which is also prohibited by the Conditions.

Analysis

Where a Notice to End Tenancy is disputed, the landlord had the burden to prove that the tenancy should end for the reasons indicated on the Notice, which in this case, is that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. A material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy.

Although the landlord argued that as the tenant was required to pay a deposit, the application for tenancy was in fact a tenancy agreement, I cannot conclude that it was. For instance, the deposit was a payment to apply to the first month's rent in the event the application was accepted, as noted on the document. Further, the document did not list the name of the landlord. I therefore do not accept that the application for tenancy was a binding contractual document, as there was no acceptance at that point, and therefore a tenancy agreement.

I further find that the no pets clause in the separate document was a material term or formed part of a written tenancy agreement, as I find that this and other terms are loosely enforced, if at all, by the landlord, as the tenant provided undisputed testimony

that there are cats living in the residential property and as she had a pet at the start of the tenancy. The landlord further did not deny that as to another of the clauses, tenants had BBQ grills on site, which was a prohibition in the terms and conditions.

Due to the above, I find that the landlord did not establish that there was a written tenancy agreement or that the term the landlord is seeking to enforce is a material term.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, issued September 17, 2014, for an effective move out date of October 20, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. **I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

Conclusion

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice.

The portion of the tenant's application not dealing specifically with her request to cancel the Notice is dismissed, with 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: November 6, 2014

Residential Tenancy Branch

