



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To order that the tenant be permitted to keep his cat in the unit.

Service:

The Notice to End Tenancy is dated September 16, 2014 to be effective October 31, 2014 and the tenant confirmed it was served personally on him. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on September 19, 2014 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy? Or is the tenant entitled to relief and is he entitled to an order that the landlord allow him to keep his cat in the unit? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties, witnesses and a tenant advocate attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced on March 14, 2013, it is a month to month tenancy, rent is \$425 a month and a security deposit of \$212.50 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has breached a material term of the tenancy agreement by keeping a cat without the landlord's permission;
- c) The tenant has caused extraordinary damage to the landlord's property.

The landlord said this is a 100 year old building and this tenant first occupied one unit on one floor and then moved to another unit on a separate floor. He said there is no written tenancy agreement and they never consented to the tenant having a pet cat. He said it was brought in about 4 months after the tenancy began as a young cat in 2013 but the tenant does not keep the litter box clean so it has caused an infestation of cockroaches. He said he saw the box on inspection of the first room occupied by the tenant and again in the second room which is on a separate floor. When the cat left, there was a reduction in roaches. The tenant states the building had roaches for many years. His advocate pointed out that he had a cat when the tenant moved in and his landlord could not now unilaterally impose a new term in the tenancy agreement.

The landlord provided evidence that he had sprayed the building regularly, he was not licensed and four complaints had been lodged with the City, two of which were related to bug infestation. He applied treatments himself.

The tenant testified that he got the cat over four years ago, he moved from another unit because a problem person had tried to climb over his balcony and frightened him. He denies he caused a cockroach infestation and says there were cockroaches for years in this 100 year old building. He states he keeps his home in a sanitary condition in compliance with section 28 of the Act.

The tenant filed an Application on September 19 and served it to cancel this Notice to End Tenancy. He objects to having to get rid of his cat and the landlord stating he/she is keeping his security deposit. The tenant noted his unit is clean and organized as in the photographic evidence, there has never been a tenancy agreement and he never agreed to not having a pet or paying a pet damage deposit.

Included with the evidence are two statements of the parties, copies of receipts for supplies for bug treatment, copies of the Notice to End Tenancy, and letter statements of some tenants.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the undisputed evidence is that the tenant sent his cat away after the Notice to End Tenancy so he is no longer in breach of a material term of his tenancy agreement. I also find that prohibition of pets was not a material term of the verbal tenancy agreement that

he entered into. I find the weight of the evidence is that there never was a term in the tenancy agreement that stated the tenant could not have pets

I find also that the landlord has not satisfied the onus of proving that this tenant did extraordinary damage to the property. I find the weight of the evidence is that this building has had an ongoing problem with infestation of cockroaches and I find insufficient evidence to support the landlord's allegation that this tenant has caused the infestation to significantly increase. The landlord, according to his testimony, has not obtained a professional opinion or opinion other than his own and management as to the cause of the cockroach infestation or its origin.

Furthermore pursuant to the request of the parties to comment on their rights and obligations in the Act, I find this was a verbal tenancy agreement and never put in writing, perhaps due to former management not requiring this so I find there never was a term in the tenancy agreement that stated the tenant could not have pets.

The landlord states the tenant refuses to sign a new tenancy agreement for his new room or supply a pet damage deposit. I find section 18 of the Act states:

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].

20 A landlord must not do any of the following:

(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

I find the evidence of the tenant credible and I prefer it to the evidence of the landlord that he had his cat for a number of years preceding this tenancy and that he brought it into this tenancy with implied permission of the landlord; the landlord saw it and never raised an objection at the time or required a pet damage deposit. Also, in the hearing, I find the landlord never denied allowing the cat but he was insistent on the tenant's obligation to pay a pet damage deposit. However, I find the landlord is precluded by section 20(c) above from demanding a deposit at this time.

Furthermore, I find the Act does not impose a mandatory obligation on a tenant to sign a tenancy agreement. Section 1 defines a tenancy agreement as being 'written or oral, express or implied'. Therefore, I find the tenant has a valid tenancy agreement which does not prohibit pets or require a deposit for them.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated September 16, 2014 is hereby set aside and cancelled. The tenancy is reinstated. No filing fee was involved.

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 06, 2014

Residential Tenancy Branch

