



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause, for an order cancelling a notice to end tenancy for unpaid rent or utilities, and to recover the filing fee from the landlords for the cost of the application.

The tenant and one of the landlords attended the hearing and each gave affirmed testimony. The tenant also called one witness who gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other, however the landlord opposed the inclusion of the evidence of the tenant that was received by the landlord on December 19, 2014 stating that the landlords could not respond to it at such a late date.

The tenant advised that the late evidence includes a letter from another tenant disputing the landlord's character evidence. The 17 pages of evidence were provided on December 19, 2014 marked A to F. The tenant drove to the landlords' house and taped all documents in folders to the landlords' house. The tenant then sent a replacement for Exhibit F.

The Residential Tenancy Branch Rules of Procedure state that late evidence may or may not be considered depending on whether the party can establish that it is new, relevant and not available at the time that their application was filed or when they served and submitted their evidence, and that it does not unreasonably prejudice a party. The landlord has opposed the inclusion of the evidence and an adjournment to consider the evidence, and I find that the tenant has not satisfied me that it could not have been available prior to December 19, 2014 and I decline to consider it.

All other evidence and the testimony of the parties and the witness are considered in this Decision. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided.

During the course of the hearing it was determined that the landlords did not issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and therefore, the application of the tenant to cancel such a notice is dismissed.

Issue to be Decided

The issue remaining to be decided is:

- Should the notice to end tenancy for cause be cancelled?

Background and Evidence

The landlord testified that this tenancy began on January 3, 2014 when the landlords purchased the rental property. The tenant was a tenant of the previous owners prior to the purchase date and still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the first day of each month. A copy of the tenancy agreement has been provided. The tenant did not pay the landlord a security deposit or pet damage deposit, and none was paid to the previous owner because the previous owner was the father of the tenant. There are currently no rental arrears.

The landlord further testified that the rent has been late on June 2, July 2 and November 2, 2014.

On November 1, 2014 the tenant had called the landlord saying that he forgot to pay the rent and wanted to pay it, but the landlord told the tenant that it wouldn't clear the bank by the 1st of the month and the landlord agreed to pick up the rent the next day around noon. No one was home when the landlord arrived, so the landlord left and while driving saw the tenant's girlfriend and asked her to stop but she didn't. The landlord parked the car, got out of her vehicle and asked for the rent and was verbally accosted by the girl who apparently lives with the tenant. The tenant had told the landlord on April 22, 2014 that the girlfriend moved in with the tenant. The landlord stated that the person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed the landlord.

The landlord further testified that a Caution Notice was sent to the tenant by registered mail on November 6, 2014 regarding late rent payments and about the tenant obtaining 2 pets that the tenant acquired without notifying the landlords. The tenant told the landlords at the outset of the tenancy that he had a cat that was not living with him, and the landlords replied that wouldn't be a problem but the landlords wanted a pet damage deposit in the amount of half a month's rent and wanted to do an inspection. The landlord is not sure when the cat arrived, but the tenant also acquired a dog and the tenant has never allowed the landlords to conduct a new inspection. The landlords

learned of the dog in late April and told the tenant it was unacceptable. A copy of the Caution Notice has been provided.

After the tenant received it, the landlords met with the tenant on November 13, 2014 and told the tenant that he had 2 weeks to remove the pets or a notice to end the tenancy would be issued. The landlord testified that the tenant has indicated in the evidence package that the landlords were told of the pets, but the landlord denies that the tenant ever notified the landlords.

The landlord also testified that the tenant breached a material term of the tenancy. The tenant paid a pet damage deposit to the landlords on December 4, 2014 by personal cheque in the amount of \$500.00, but the landlords have not yet cashed it. The tenant had told the landlords in a letter that the landlords could not cash it pending the outcome of this hearing. The tenant acquired the pets without notification and proper procedures as per the rental agreement.

The landlords served the tenant with a 1 Month Notice to End Tenancy for Cause by sending it registered mail to the tenant on November 19, 2014. A copy of the notice has been provided and it is dated November 18, 2014 and contains an expected date of vacancy of December 31, 2014. The reasons for issuing the notice are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant testified that he asked the landlords about a cat at the outset of the tenancy, and the landlord said that was okay. At the end of March, 2014 the tenant's girlfriend moved in and the other landlord saw the dog. The landlords, the tenant and the tenant's girlfriend met at the front door of the rental unit and the landlords said that since the tenant didn't have a cat, he could have the dog. Then the tenant got his cat back but did not inform the landlords right away, but admitted it when asked thinking the landlords would ask for a pet damage deposit. The parties discussed it and the landlord requested \$500.00 security deposit and a \$500.00 pet damage deposit, but never gave a date to pay even though the tenant asked. The landlords never asked about an inspection; it could have been done when they were there. Further, the Caution Notice had no dates by which the pets had to be removed.

With respect to disturbing the landlord, the tenant testified that the landlord was equally aggressive. The tenant's girlfriend was approached by the landlord and the

confrontation continued to the rental unit during which time the landlord threatened to evict. Then the tenant received the notice to end the tenancy, and several days later, on December 14, 2014 the tenant was handed a package of documents from the landlord which was the only indication of the allegations of the landlords for disturbances. No notification or caution was given to the tenant for disturbances.

The tenant also testified that had he been aware that rent could be paid by cash it would never have been late. Sometimes their bank is closed, such as on July 1.

The tenant's witness testified that she is the girlfriend of the tenant and on November 2, 2014 she left a store and someone from a car window who the witness did not recognize screamed, "Pull over – stop now." The witness was walking her dog and the landlord was yelling through traffic. The witness had to be at the rental unit at 12:00 so that the landlord could obtain the rent money. The landlord pulled into the gas station and asked for the rent again and the parties had an escalated verbal argument about the rent. The witness got the rent money and gave it to the landlord and told the landlord to leave. The witness was not comfortable being around the landlord, and no receipt for the rent was given. The witness also testified that the landlord aggravates and interrupts the witness all the time and during all interactions speaks over the witness.

Analysis

Where a tenant disputes a notice to end the tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

With respect to the reasons for issuing it, firstly, I am not satisfied that the landlords have established that the tenant has been repeatedly late paying rent. A minimum of 3 late payments is required to justify ending a tenancy for repeated late rent, and a landlord must not refuse rent. Further, if a tenant pays by cheque or post-dated cheque or by any other means, just because it hasn't landed the landlord's bank account by the due date, does not mean it's considered late. Further, I accept the testimony of the tenant that had he known that he could have paid by cash, none of the rental payments would be late, and that a bank draft couldn't be obtained on July 1, 2014 which was a statutory holiday.

With respect to causing a disturbance, I am not satisfied that the tenant's girlfriend started any confrontation with the landlord, but the confrontation was started by the landlord. Further, the confrontation started off the rental property.

With respect to the alleged breach of a material term of the tenancy, the landlord testified that upon purchasing the rental property the landlords were aware that the tenant had a cat but the cat wasn't at that time resident in the rental unit. Then the tenant acquired a dog and according to the tenant, the landlords said that since the tenant didn't have the cat, he could have the dog. The landlord disputes that, however then the tenant obtained the cat and agrees that he did not tell the landlords.

The landlord claims that the parties had agreed to an inspection and a pet damage deposit, but there is nothing in the tenancy agreement that prohibits pets. Therefore, the only breaches of a material term could be the failure to pay a pet damage deposit and an inspection of the rental unit as the landlord testified was verbally agreed to.

The tenant has given the landlords a pet damage deposit and has no authorization to tell the landlords not to cash it, and there is no reason the landlords can't cash it. The *Act* states that

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;
- (b) require or accept more than one security deposit in respect of a 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;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

The *Act* also states that a landlord may end a tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

The landlord testified that the landlords met with the tenant on November 13, 2014 and told the tenant that he had 2 weeks to remove the pets or a notice to end the tenancy would be issued. The landlords issued the notice ending the tenancy on November 18, 2014, being just 5 days after the meeting. The tenant filed the application for dispute resolution disputing the notice on November 25, 2014 and then paid the pet damage deposit on December 4, 2014. The landlord is not sure when the cat arrived, but

the tenant also acquired the dog which the landlords learned of in late April but there is no evidence before me that the landlords asked in late April for a pet damage deposit.

With respect to the inspection, a landlord is entitled to inspect a rental unit monthly so long as the tenant is given no less than 24 hours written notice, and the *Act* sets out what that notice must state, how the notice must be given, and when the notice is deemed to be received by the tenant. The landlord has not done that, and the tenant testified that had the landlords asked, the inspection could have been done when they were there and I accept that testimony. The onus is on the landlords to schedule the inspection, not the tenant.

In the circumstances I find that the landlords have failed to establish any of the reasons for issuing the notice ending the tenancy, and the 1 Month Notice to End Tenancy for Cause issued on November 18, 2014 is hereby cancelled, and the tenancy continues.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the filing fee. I hereby grant a monetary order in favour of the tenant in the amount of \$50.00. The tenant may reduce rent by that amount for a future month or otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued on November 18, 2014 is hereby cancelled, and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00. The tenant may reduce rent for a future month by that amount or otherwise recover it.

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: December 29, 2014

Residential Tenancy Branch

