



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords and the Tenant. The Landlords applied for an Order of Possession based on a 1 Month Notice to End Tenancy for Cause (the “Notice”) and for breach of an agreement relating to the Notice, and to recover their filing fee. The Tenant applied to cancel the Notice.

Both parties appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The Tenant called two witnesses during the proceedings both of whom also provided affirmed testimony.

No issues in relation to the service of the Applications, the Notice and the parties’ documentary evidence under the *Residential Tenancy Act* (the “Act”) were raised by the parties at the start of the hearing.

The instructions for the hearing were provided to both parties and each party acknowledged their understanding of the proceedings. The parties were given a full opportunity to provide oral testimony and present their documentary evidence during the hearing. The parties were also given a full opportunity to cross examine each other and the witnesses on the evidence provided.

However, only the relevant testimony and evidence relating to the issues on the Applications has been documented in this decision.

Preliminary Issues

At the start of the hearing the Landlords testified that they had served the Notice to the Tenant on October 17, 2014 by putting it in his mail box. The Tenant confirmed receipt of the Notice three days later on October 20, 2014.

Section 90(d) of the Act states that a document served by leaving it in a mail box is deemed to be received three days later. Therefore, I find that in accordance with the Act and the Tenant's testimony, the Tenant received the Notice on October 20, 2014. The Tenant made his Application to dispute the Notice on October 29, 2014. Therefore, I find that the Tenant applied to dispute the Notice within the 10 day time limit stipulated by Section 47(4) of the Act.

As a result, the hearing continued to hear the evidence of both parties in relation to the Notice as follows.

Issue(s) to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Are the Landlords entitled to an Order of Possession?

Background and Evidence

Both parties agreed that this tenancy started on January 1, 2006 on a month to month basis with the Tenant and a previous Landlord. The tenancy was recorded on a document titled "Application For Rent of Suite" and was signed by the Tenant. The document established that rent was payable by the Tenant in the amount of \$560.00 on the first day of each month. Attached to this document is a document titled 'Condition of Tenancy' and one of the conditions stipulates "No animals or pets of any description may be kept in the premises and birds may not be fed from the premises".

Rent is currently payable by the Tenant in the amount of \$633.75.00.

The Tenant confirmed that when he started his tenancy he knew he was not allowed pets in his rental suite as per the "Condition of Tenancy" document.

The Tenant testified that during his tenancy, he noticed other residents in the building had cats. As a result, the Tenant explained to the previous Landlord that he wanted to have a cat. The Tenant testified that the Landlord verbally agreed that he could and subsequently he purchased a cat in 2007.

The Tenant explained that in 2008, he signed a proper tenancy agreement which was completed by the Landlord and signed by the Landlord's agent who was the building manager at the time. The Tenant provided this tenancy agreement in written evidence and pointed to the portion which states that the Tenant is allowed to have one neutered

and spayed cat. The Tenant submitted that this written agreement ratified the verbal consent he had from the previous Landlord in 2007.

The Landlords testified that they took over the Tenant's tenancy as Landlords on March 1, 2013 and it only recently came to their attention that some of the residents have pets in their suites which were not previously authorised.

The Landlords explained that they also started to receive verbal complaints from other residents that the Tenant's cat was being let loose and unsupervised throughout the building. The Landlords testified that as the cat comes in and out of the building it was bringing with it germs and thereby causing a health hazard. As a result, they served the Tenant with a warning letter on October 6, 2014 which explained that the Tenant had breached his contract at the start of the tenancy which prohibited pets in this suite and asked him to move out or remove the cat. The warning letter was provided in written evidence.

The Landlord testified that the Tenant's cat is still causing a safety hazard to the building because cats carry germs, bacteria and fleas and this is causing a health hazard to the residents. The Landlords prepared a written statement reflecting this safety concern and it was signed by multiple residents of the building.

As a result, the Tenant was served with the Notice to end his tenancy with an effective vacancy date of November 30, 2014 because the Tenant had breached a material term of the tenancy agreement which was not corrected have written notice to do so was given.

The Tenant disputed the Landlords' evidence that his cat was creating a health hazard in the building as he stated that his cat is kept clean, is spayed and has all of its immunisations. The Tenant explained that he takes his cat outside and lets him wonder around for periods of time until the cat has relieved himself; after this time he will go back downstairs and let the cat back inside. The Tenant explained that on occasions his cat had been let back into the building by other residents who know that it is his cat and then left to come back to the unit. However, the Tenant has now taken steps to prevent this from happened. The Tenant submits that this is not evidence that his cat is a health hazard to other residents.

In support of this, the Tenant also provided a prepared statement signed by multiple residents of the building who confirm that the Tenant's cat is clean, healthy, and friendly and does not pose a concern. The Tenant called two witnesses for the hearing who

both testified that the Tenant's cat posed no danger to the building. I also noted that one of the witnesses currently owns a cat and the other witness was a previous cat owner.

The Landlords did not cross examine the witnesses but submitted that some of the residents in the building do have cats but this is not authorised and they are working hard to address this issue in the other tenancies as well.

The Landlords claimed that the tenancy agreement provided by the Tenant which is claimed to be agreed upon by the previous Landlord is fraudulent. The Landlords explained that the tenancy agreement was signed by the building manager and not the Landlord. The Landlords claim that the building manager was a friend of the Tenants who was subsequently fired by the Landlord. Therefore, the building manager had no authorisation from the Landlord to sign the tenancy agreement. The Landlords also put doubt on this agreement by questioning the Tenant as to why he had not provided them with a copy of this agreement to them after he was issued with the warning letter, but now seeks to rely on it for this hearing. The Landlords explained that in the file for this tenancy which they inherited, they do not have a copy of this agreement the Tenant relies on.

The Tenant testified that he did explain this tenancy agreement to the Landlords but did not respond to the warning letter in writing and provide them with a copy of it as he thought they had one.

The Landlords further testified that at the time the Tenant was seeking the previous Landlord's consent to have a cat, the previous Landlord was expressly prohibiting pets in the building because she did not allow pets in any of the other tenancies she signed. The Landlord provided multiple tenancy agreements for other rental units in the building by the previous Landlord.

Analysis

When a Landlord issues a Tenant with a Notice for the reason in this case, the Landlord bears the burden of proving the reasons on the Notice disputed by the Tenant.

In this case, I find that the Landlords seek to end the tenancy because the Tenant is alleged to have breached a material term of his original tenancy agreement by having a pet that he was prohibited from having at the onset of his tenancy.

The Landlords also seek to end the tenancy because they allege that the Tenant's cat is causing a health hazard. While this reason would also come under other reasons on the

Notice, which the Landlords have not elected, I have also considered the evidence in relation to the alleged hazardous impact of the cat as being a breach of a material term of the tenancy.

In relation to the Landlords' claim that the Tenant breached the original agreement with the previous Landlord by having a cat, I find that the Tenant did not dispute the original agreement that he was prohibited from having pets. However, the Tenant relies on a subsequent agreement that was signed by the building manager who was purporting to be the previous Landlord's agent which the Landlords dispute.

The agreement provided by the Tenant in written evidence of his authorisation to have one cat is certainly clear on the agreement provided. However, I find that the Landlords have failed to establish that this tenancy agreement was fraudulent. I find that the Landlords have not presented sufficient evidence to show that the Tenant was not given permission to have a cat by the building manager **who at the time** it was entered into, was acting as the Landlord's agent. In this case, the Landlord would have been required to prove that the building manager was not acting as the agent of the previous Landlord.

The Landlord was asked whether the previous Landlord could appear for the hearing to testify as to whether the Tenant had been given permission to have a cat or whether she had authorised the building manager to act as her agent at the time the tenancy agreement provided by the Tenant was entered into. However, the Landlords explained that the previous Landlord was on holiday. I find that it would have been beneficial to hear from the previous Landlord in order to make a determination on this matter.

In the absence of this evidence, I find that a mere allegation by the Landlords that the previous building manager was fired and did not have authorisation to sign the Tenant's tenancy agreement is not substantiated. I also accept the Tenant's submission that he acted on the permission of the building manager who at the time was acting as the Landlord's agent.

The Landlords explained that the Tenant failed to provide them with a copy of this agreement when he was served the warning letter and somehow produced this before the hearing. While, I find that it would have been beneficial for the Tenant to have provided a copy of this to the Landlords before the Notice was served to him, I find that the Landlords were still served this evidence prior to this hearing and were put on notice that the Tenant intended to rely on this evidence. Therefore, the Landlords had sufficient time to present evidence from the previous Landlord to rebut this evidence for this hearing, which they did not do.

In relation to the Landlords' submission of several tenancy agreements signed by the previous Landlord prohibiting pets, I find that the majority of the tenancy agreements provided are incomplete and do not specifically have a pet prohibition clause. Therefore I find that this is not reliable and sufficient evidence that the Tenant was not given permission to have a cat. Furthermore, I also note that some of the residents in the building currently have cats.

Based on the foregoing and on the balance of probabilities, I find that the Landlords have not established that the Tenant was prohibited from having a cat in the rental suite. The parties disputed each other's evidence and I find that the Landlords, who bear the burden of proof, have provided no more compelling evidence than the Tenant's evidence. Therefore, I am unable to find that the Tenant has breached a material term of his tenancy.

In relation to the Landlord's evidence regarding the alleged health hazard being created by the Tenant's cat, I find that the written statements provided by the Landlords are no more compelling than the ones provided by the Tenants. In the absence of any independent and clear evidence that it is the Tenant's cat that particularly poses a health hazard when there are other cats residing in the same building, I find that the Landlords have provided insufficient evidence on these grounds also. As a result, I find that the Landlords have not proved the Notice. Therefore the Landlord's Application must fail and the Notice must be cancelled.

Conclusion

For the reasons set out above, I grant the Tenant's Application and cancel the Notice dated October 17, 2014. The tenancy will continue until it is ended in accordance with the Act. The Landlords' Application is dismissed.

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 05, 2014

Residential Tenancy Branch

