



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, OPC

Introduction

The tenant applies to cancel a one month Notice to End Tenancy dated January 20, 2015. The Notice alleges that the tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after being given written notice to do so.

The landlord applies for an order of possession pursuant to that Notice to End Tenancy.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the grounds for the Notice are established?

Background and Evidence

The rental unit is a three bedroom house in a small community on Vancouver Island. The tenancy started in December 2013. The rent is \$1050.00 per month. The landlord holds a \$500.00 security deposit and a \$100.00 pet damage deposit.

The written tenancy agreement includes an addendum that states: "Any new Pets have to be "OK'd" by landlord.'

The landlord testified that the tenant only had a cat and some fish when she moved in but that in February 2014, when a property management company retained by the landlord was viewing the home, it was determined that the tenant was keeping two small dogs. She gave the tenant two letters directing her to remove the dogs but the tenant has not complied. The dogs remain in the home as of the date of this hearing.

The tenant testified that she informed the landlord of the dogs before move in and had the landlord's consent.

Analysis

I find as a fact that the tenant was not keeping dogs as pets when she moved in and that she was required to obtain the landlord's consent before bringing them into her home.

I base this finding on the fact that the landlord's ad at the time stated "no dogs." I accept the tenant's evidence that she had not seen that ad before entering into the tenancy but it goes to demonstrate the landlord's state of mind.

In addition, the pet damage deposit was only \$100.00 when it could have been up to \$500.00. The reduced amount is consistent with the tenant not having dogs, which are prone to damaging residential premises.

As well, when the landlord hired her property management company she filled out a form indicating that the tenant only kept a cat. Had the parties had a prior agreement to allow dogs, there appears to be no reason why the landlord would not have said so in the property management form completed in February 2014.

I find that the tenant is in breach of her tenancy agreement by not obtaining landlord approval to bring dogs into the home.

I find that though the tenant is in breach of her tenancy agreement it is not a breach of a "material term" of the tenancy, as is required in order to justify an eviction Notice under s. 47 of the *Residential Tenancy Act* (the "Act").

Residential Tenancy Policy Guideline #8 "Unconscionable and Material Terms" describes a material term as "a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement."

The fact that the landlord might "OK" some pets but refuse others detracts from the term being a material one. In addition, the regular feeding of a bird at a window sill might be considered to be keeping a pet. Surely such a trivial action would not have been considered by the parties to be one justifying eviction.

For these reasons I grant the tenant's application and cancel the Notice to End Tenancy dated January 20, 2015.

The tenant is, however, in breach of her tenancy agreement by keeping the two dogs.

I order that the tenant remove and keep removed all dogs from the residential premises and that she do so within seven days of this hearing date. If she should fail to comply or if dogs are again kept at the premises during her tenancy, the landlord may give Notice to End Tenancy pursuant to s. 47 (1) (l) for failure to comply with this order.

Conclusion

The tenant's application is allowed and the Notice to End Tenancy is cancelled.

The tenant is ordered to remove dogs from the premises on the terms above.

Though the tenant has been successful, I deny her recovery of the filing fee as she is in breach of her tenancy agreement.

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: February 27, 2015

Residential Tenancy Branch

