



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction and Procedural Matters

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and for recovery of the filing fee paid for this application.

The tenant and the landlord's spouse attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Although both parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me, the hearing on the landlord's spouse's part was quite challenging at the start. The landlord's infant child was present and repeatedly cried close to the telephone during the hearing. The landlord's spouse confirmed that she did not have anyone present who could sit with the child, that her husband, the landlord, was at work and could not attend the hearing, and had no options other than to exit the conference or continue with the child crying. I did allow the hearing to continue; however, the landlord's spouse struggled with the English language and was challenged to understand my questions, despite many repetitions. Ultimately the landlord was able to testify in support of the Notice.

At the outset of the hearing, neither party raised any issues regarding whether the evidence had been served to the other; however, the tenant submitted that she had just received the landlord's 2nd package of documentary evidence submitted 2 days prior to the hearing and did not have the opportunity to respond. I determined that the evidence would be admitted as the landlord's spouse testified to the contents.

The landlord submitted other documentary evidence, received March 24, 2015, and this evidence was admitted.

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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted a written tenancy agreement showing that this tenancy began on July 1, 2013, that monthly rent is \$850.00, and that she paid a security deposit of \$425.00. The written tenancy agreement also lists another landlord and the undisputed evidence is that the current landlord purchased the property in December 2014.

The tenant's evidence contained a copy of the Notice, which was dated March 1, 2015, with an effective end of tenancy date of April 2, 2015, and as alleged cause for ending the tenancy was 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.

The landlord's spouse stated that the Notice was served to the tenant via registered mail, but could not state when the tenant was served the Notice; however the tenant submitted it was served by registered mail and that she received it on March 5, 2015.

The Notice informed the tenant that she had 10 days after receipt of the Notice to file an application in dispute of the Notice, or she was presumed to have accepted that the tenancy ended by the effective date of the Notice, or in this case, April 2, 2015. The tenant filed her application on March 9, 2015, within the allowed 10 days of receipt.

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 April 30, 2015.

Landlord's spouse's evidence-

The landlord's spouse could not explain why the Notice was issued and stated that she did not understand the part about a material term.

The landlord's spouse also stated that they are seeking enforcement of the addendum to the written tenancy agreement, which states that pets are not allowed in the premises unless agreed upon otherwise, with continued consent of the landlord. I note that the landlord apparently interpreted this term to mean absolutely no pets at all under any circumstances. Submitted into evidence by the tenant was a copy of the written tenancy agreement with addendum.

The landlord's written submission stated that when he attended the rental unit in January 2015 to introduce himself, he noticed the tenant had a cat, at which time he informed the tenant that the written tenancy agreement did not allow pets. According to the landlord's written submissions, the tenant replied that she had an agreement with the previous owner and that she had a copy of that agreement. According to the landlord, the tenant failed to supply him with a copy of the agreement, until he received it in her evidence.

At the hearing, the landlord's spouse stated that the person signing the agreement authorizing a cat did not have authority to act for the landlord.

Tenant's response-

Into evidence, the tenant submitted a copy of a document entitled "Pet Agreement". This two page agreement was dated July 1, 2013, and signed by the original landlord's agent, who also signed the written tenancy agreement.

The tenant explained that when she first moved into the rental unit, she had 2 dogs, of which the landlord was aware as they were listed by name, colour, breed, age, size and gender on the pet agreement. Additionally, there was a cat on the premises, which was left by the previous tenant, which the landlord's agent desired the tenant to keep rather than being taken to an animal shelter, according to the tenant and the pet agreement. The pet agreement, along with an attached letter by the landlord's agent, also stated that the cat was neutered and that the tenant would not be charged a pet deposit as long as there was no damage to the rental unit.

The tenant submitted she did not know why the current landlord would not have received a copy of this document when he purchased the property.

The tenant disclosed that she no longer has the 2 dogs, as they left when her mother vacated the rental unit, but still has the cat as her pet.

Analysis

Where a landlord's notice to end a tenancy is disputed, in this case, issued pursuant to section 47 of the Act, 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.

According to Residential Tenancy Branch Policy Guideline #8, 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.

In this instance, although the landlord claimed the tenant was not allowed a pet and that this restriction was a material term of the tenancy agreement, I do not find this to be the case. In reviewing the written tenancy agreement and addendum, these two documents were signed on June 25, 2013, by the landlord's agent and the tenant. The relevant part of the addendum states that pets are not allowed unless agreed upon.

I find that the Pet Agreement signed on July 1, 2013, contained the landlord's consent, and in fact, the wishes of the landlord that the tenant would keep the cat left from the previous tenant. I also find the tenant had full consent and authority pursuant to the Pet Agreement to keep the two dogs that are no longer there at the present. I do not accept the present landlord's spouse's assertion that the previous agent of the landlord had no authority to act for the previous landlord, as that agent signed the written tenancy agreement and in all respects presented, represented the landlord's interests for this tenancy.

I also find that the landlord has failed to submit any evidence or otherwise prove that the pet clause in the addendum is a material term of the tenancy agreement.

In all respects and due to the above, I find the landlord has not submitted any evidence that the tenant breached a material term of the tenancy agreement or that the term relied upon by the landlord was a material term.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated March 1, 2015, for an effective move-out date listed of April 2, 2015, 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*.

I also grant the tenant recovery of her filing fee of \$50.00, and pursuant to section 72(2), I direct her to deduct this amount from her next, or a future month's rent payment in satisfaction of her monetary award of \$50.00. The tenant should advise the landlord when she is making this deduction.

Conclusion

The tenant's application has been granted as I have cancelled the landlord's 1 Month Notice to End Tenancy for Cause.

The tenant has been granted recovery of her filing fee of \$50.00.

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: April 17, 2015

Residential Tenancy Branch

