



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to set aside a Notice to End Tenancy for Unpaid Rent.

At the outset of the hearing the Landlord and the Tenant agree that the issue with unpaid rent has been resolved. With the consent of the Tenant, the Landlord stated that he will withdraw the Notice to End Tenancy for Unpaid Rent.

The Tenant stated that on April 14, 2015 the original Application for Dispute Resolution and the Notice of Hearing were personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of these documents.

The Tenant stated that on April 15, 2015 an amended Application for Dispute Resolution was personally served to the Agent for the Landlord. The Agent for the Landlord acknowledged receipt of this document.

On April 14, 2015 the Tenant submitted documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Agent for the Landlord sometime in mid-April of 2015. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On May 12, 2015 the Landlord submitted documents to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were not served to the Tenant. As the documents were not served to the Tenant, they were not accepted as evidence for these proceedings.

Both parties were present at the hearing. They were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 15, 2014 and that the Tenant agreed to pay monthly rent of \$950.00 by the first day of each month.

The Landlord and the Tenant agree that they entered into a written tenancy agreement for the rental unit. The Landlord stated that on page three of the tenancy agreement he wrote that dogs were not permitted and that the Tenant signed the agreement after that entry had been made. The Tenant stated that when she signed the tenancy agreement the notation regarding dogs not being permitted had not been added to the tenancy agreement, although the rest of the information on the page was added prior to her signing the agreement.

The Landlord stated that the Tenant was given a copy of the tenancy agreement, which included the reference to dogs not being allowed, on September 15, 2014. The Tenant stated that she was given a copy of the tenancy agreement, which did not include the reference to dogs not being allowed, on September 16, 2014. The Tenant stated that she was given a second copy of the tenancy agreement, which included the reference to dogs not being allowed, on March 08, 2015.

The Tenant submitted a copy of page three of the tenancy agreement, with the reference to dogs, and a copy of page three of the tenancy agreement, without the reference to dogs. The Tenant alleges that the Landlord altered the tenancy agreement to include the reference to dogs after she had signed the agreement.

The Landlord alleges that the Tenant altered the tenancy agreement after it was signed by removing the reference to dogs. The Tenant submitted photocopies of the first three pages of the tenancy agreement plus the last page of the tenancy agreement. The Agent for the Landlord noted that these four pages, including page three of the agreement which has a reference to dogs not being allowed, are askew. The Agent for the Landlord noted that page three of the agreement which does not have a reference to dogs not being allowed, is properly centered on the page and is not askew.

The Agent for the Landlord contends that since page three of the agreement that has a reference to dogs not being allowed, is askew and is similar to the other three pages of the tenancy agreement, it should be inferred that these are copies of the original documents. He contends that since page three of the tenancy agreement is properly centered on the page, it should be inferred that this page has been reproduced.

The Agent for the Landlord noted that the box that appears after the words "Damage Deposit" and before the words "not applicable" is missing from page three of the agreement which does not have a reference to dogs not being allowed but is present on page three of the agreement which has a reference to dogs not being allowed. He contends that the "missing box" establishes that the Tenant somehow removed the reference to dogs not being allowed.

The Tenant stated that prior to entering into this tenancy agreement she told the Landlord she had a dog and he did not object to her having a dog in the rental unit. The Landlord stated that the Tenant did not tell him that she had a dog prior to moving into the rental unit and that he did not learn she had a dog until several months after the tenancy began.

The Tenant stated that the Landlord spoke with her regarding complaints he had received about her dog "a couple of weeks" after the start of the tenancy. The Landlord stated that the complaints were received several months after the start of the tenancy.

The Tenant stated that on September 15, 2014 she paid the Landlord \$950.00, \$475.00 of which was for rent and \$475.00 of which was for a pet damage deposit. She stated that on September 16, 2014 she paid the Landlord an additional \$475.00 for a security deposit. She contends that the \$475.00 she paid on September 15, 2014 for a pet damage deposit establishes that the Landlord gave permission for her to have a pet.

The Landlord stated that the Tenant paid a security deposit of \$475.00 on September 15, 2014 and rent of \$475.00 on September 16, 2014. He stated that they did not discuss a pet damage deposit because pets were not allowed.

The Tenant stated that the occupants of unit #301 in this residential complex have two dogs and that the Landlord is attempting to end their tenancy as a result of those dogs. The Agent for the Landlord stated that there are no dogs in unit #301 and that the Landlord is not attempting to end the tenancy of those occupants. The Tenant submitted no evidence to corroborate this submission nor did she have a telephone number for those occupants so they could not be called as witnesses at these proceedings.

The Tenant stated that she acquired a second dog three or four months after the tenancy agreement and that she did not ask the Landlord's permission to keep the dog. She stated that she asked the Landlord last week if she could keep the second dog if she paid another security deposit for the second dog, and that he did not agree to that. The Landlord stated that this was the first time a pet damage deposit was discussed.

The Agent for the Landlord stated that a One Month Notice to End Tenancy was posted on the door of the rental unit on March 30, 2015, which declared that the Tenant must vacate the rental unit by April 01, 2015. The Tenant stated that she located this Notice under her door on March 30, 2015.

The Landlord and the Tenant agree that the Landlord did not place a check mark beside any of the reasons for ending the tenancy that are listed on page two of the One Month Notice to End Tenancy. The parties agree that at the top of the Notice to End Tenancy the Landlord wrote: "As per rental agreement, you are not supposed to have any dogs. "No Dogs Allowed"". At the outset of the hearing the Tenant stated that she understood the Landlord was attempting to end the tenancy because she was keeping a dog in the rental unit.

The Landlord and the Tenant agree that the Landlord served the Tenant with a letter, dated March 08, 2015, which the Tenant submitted in evidence. This letter declares that:

- the Landlord has learned the Tenant has dogs in the rental unit;
- that dogs are not allowed in the rental unit;
- that the Tenant must make other arrangements for the dogs if the tenancy is to continue; and
- that if the Tenant opts to vacate the rental unit she should advise the Landlord of her decision by March 29, 2015.

The Landlord and the Tenant agree that the Tenant served the Landlord with a letter, dated March 18, 2015, which the Tenant submitted in evidence. This letter serves to inform the Landlord that she will not be vacating the rental unit. In the letter the declares that:

- the advertisement for the rental unit indicated "cats and dogs ok";
- when she handed the rent deposit to the Landlord she informed the Landlord that she had a dog;
- the original tenancy agreement did not declare that dogs were not permitted; and
- the Landlord cannot end the tenancy because he no longer likes her pet.

The Tenant stated that the internet advertisement for this rental unit declared that pets were permitted in the rental unit and that she would not have contacted the Landlord if the advertisement had not indicated that pets were permitted. The Agent for the Landlord stated that the internet advertisement did not declare that pets were permitted.

The Advocate for the Tenant stated that he is aware that the Tenant was searching for a rental unit that allowed pets, but he cannot recall whether the advertisement for this rental unit indicated that pets were permitted.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a written tenancy agreement and that somebody has altered page three of the tenancy agreement, to either add or remove a reference to dogs not being allowed in the rental unit.

While it is impossible to determine, with certainty, who altered page three of the tenancy agreement, I find it most likely that it was altered by Tenant. In reaching this conclusion I was influenced by the fact the box that appears after the words "Damage Deposit" and before the words "not applicable" is missing from page three of the agreement which does not have a reference to dogs not being allowed but is present on page three of the agreement which has a reference to dogs not being allowed.

In my view, this "missing box" indicates that this page has been altered by removing something from the original document. Given that something appears to have been removed from the document, I find it most logical to conclude that the box was either intentionally or inadvertently removed by the Tenant when she removed the reference to dogs not being allowed in the rental unit.

For me to conclude that the Landlord altered the original document, I would have to conclude that he either created a new page three of the document using a different form that did not have the "missing box" on it or that he somehow added the "missing box" when he added the reference about dogs not being allowed in the rental unit.

I find it illogical to conclude that the "missing box" was added by the Landlord when he added the reference about dogs not being permitted, as there is absolutely no reason for him to do so and the box is consistent with the size and shape of other boxes on the form.

I find it equally illogical to conclude that the Landlord created a new page three of the document using a new form that did not have the "missing box" on it. There would be no reason for the Landlord to alter the form in such a complicated manner, as the Landlord would simply need to add the comment to the existing form.

In determining who altered page three of the tenancy agreement I placed little weight on the Landlord's submission that page three of the agreement that has a reference to dogs not being allowed, is askew and is similar to the other three pages of the tenancy agreement while the page three without the reference to the dogs is not askew. I find this discrepancy could be easily explained by the Tenant's testimony that she received one copy of the agreement on September 16, 2014 and a second copy of the allegedly altered agreement on March 08, 2015.

Even if the tenancy agreement did not have a reference to dogs not being permitted, I would conclude that the Tenant has submitted insufficient evidence to show that the Landlord verbally agreed the Tenant could keep a dog in the rental unit. When one party alleges a verbal agreement has been made and the other party disputes the allegation, the burden of proving an agreement has been reached rests with the party attempting to rely on the verbal agreement. In these circumstances, the burden of proving there was a verbal agreement to allow pets in the rental unit rests with the Tenant.

I find that the Tenant has failed to establish that there was a verbal agreement

regarding pets, in large part, because there is no evidence that corroborates the Tenant's testimony that they had a verbal agreement or that refutes the Landlord's testimony that he did not agree the Tenant could keep a dog in the unit.

I favour the evidence of the Landlord, who stated that the Tenant did not pay a pet damage deposit, over the testimony of the Tenant, who stated that she paid a pet damage deposit of \$475.00 on September 15, 2014. In reaching this conclusion I was heavily influenced by the tenancy agreement submitted in evidence, which clearly indicates on both versions of page three that a \$475.00 security deposit was required and that a pet damage deposit is not required. Given that the tenancy agreement indicates a security deposit was due, I find it reasonable to conclude that the agreement would have also declared if a pet damage deposit was also due.

Landlords typically collect a pet damage deposit when pets are allowed in the rental unit. In my view, the absence of evidence that corroborates the Tenant's testimony that a pet damage deposit was paid lends support to my conclusion that the Landlord did not authorize the Tenant to have a pet in the unit.

In determining this matter I have placed no weight on the Tenant's submission that other occupants of the residential complex have dogs, as the Tenant submitted no evidence to support this testimony and the Landlord denies the allegation.

In determining this matter I have placed no weight on the Tenant's submission that the internet advertisement declared that pets were allowed. In the absence of documentary evidence that corroborates this testimony or that refutes the Landlord's submission that the advertisement declared pets were not allowed, I find this submission has little evidentiary value.

In determining this matter I have placed no weight on the Advocate for the Tenant's testimony that the Tenant was searching for a rental unit that allowed pets, as he cannot recall whether the advertisement for this particular rental unit indicated pets were permitted. I find it entirely possible that if a person is unable to find a rental unit that permits pet they will start responding to advertisements that do not specifically exclude pets.

Even if I had concluded that the Landlord had agreed at the beginning of the tenancy that the Tenant could keep one dog, I find, on the basis of the undisputed evidence, that the Landlord did not agree that the Tenant could have two dogs in the rental unit.

Section 47 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy for a variety of reasons by providing written notice to end the tenancy. On the basis of the undisputed evidence, I find that the Tenant received a One Month Notice to End Tenancy on March 30, 2015.

Section 47(3) of the *Act* stipulates that a notice to end tenancy served pursuant to section 47 of the *Act* must comply with section 52 of the *Act*. Section 52(1)(d) of the *Act*

stipulates that to be effective, a notice to end a tenancy must state the grounds for ending the tenancy. Although the One Month Notice to End Tenancy does not have a check mark beside the section that indicates the tenancy is ending because the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time after receiving written notice to correct the breach, I find that the information the Landlord added at the top of the Notice to End Tenancy clearly informed the Tenant that the Landlord wished to end the tenancy because the Tenant was not permitted to have dogs in the rental unit.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used. As the notation added on the Notice to End Tenancy serves to inform the Tenant that the Landlord is ending the tenancy because dogs are not allowed in the rental unit, which is the reason for ending the tenancy, I do not find that the Notice to End Tenancy is rendered ineffective simply because the Landlord did not place a check mark beside one of the reasons for ending the tenancy that are listed on page two of the Notice to End Tenancy.

In determining this matter I was heavily influenced by the Tenant's testimony that she understood the Landlord was attempting to end the tenancy because she had dogs in the rental unit. As the Tenant clearly understood the true reason the Landlord wished to end the tenancy, I find that the Notice to End Tenancy complies with section 52(1)(d) of the *Act*.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the rent is due by the first of each month, the Notice to End Tenancy must end the tenancy on the last day of the month. This One Month Notice to End Tenancy, which declares the tenancy will end on May 01, 2015, does not comply with section 47(2) of the *Act*.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is May 31, 2015.

Section 47(1)(i) of the *Act* authorizes a landlord to end a tenancy if a tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

I find that whether pets are allowed in the rental unit is a material term of the tenancy because of the importance of the term to both parties. At the hearing the Tenant stated that she was looking for a place that permitted pets and would not have moved into the rental unit if pets were not allowed. Conversely, the Landlord made a note on the tenancy agreement that clearly indicates that pets were not allowed.

I find that the Tenant breached a material term of the tenancy agreement by having a dog in the rental unit. Even if I am incorrect about whether the parties agreed that the Tenant could have one dog in the rental unit, the undisputed evidence is that she moved a second dog into the rental unit without permission. There is no doubt that the presence of the second dog is a breach of a material term of the tenancy.

To end a tenancy agreement for breach of a material term a landlord must inform a tenant, in writing, that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy. I find that the letter, dated March 08, 2015, adequately informs the Tenant that the Landlord intends to end the tenancy if the Tenant continues to keep dogs in the rental unit.

As I have concluded that the Tenant has breached a material term of the tenancy agreement by keeping a pet; that the Landlord informed the Tenant, in writing, that the breach must be corrected; and that the Tenant has not corrected the breach, I find that the Landlord has grounds to end this tenancy pursuant to section 47(1)(i) of the *Act*.

Conclusion

As I have determined that the Landlord has grounds to end this tenancy pursuant to section 47 of the *Act*, I dismiss the Tenant's application to set aside the One Month Notice to End Tenancy and I grant the Landlord an Order of Possession, as requested at the hearing, which is effective on May 31, 2015.

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: May 14, 2015

Residential Tenancy Branch

