



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MT, CNC

Introduction

The tenant applied requesting more time to cancel a *1 Month Notice to End tenancy for Cause* and to cancel the *1 Month Notice to End tenancy for Cause* on March 11, 2015.

Both parties were present at the face-to-face hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant made a written evidence submission on April 23, 2015. This evidence was not given to the landlord; therefore, it was set aside. The tenant was at liberty to make oral submissions.

The landlord made a three page evidence submission to the Residential Tenancy Branch and tenant on April 27, 2015. Section 3.15 of the Residential Tenancy Branch (RTB) Rules of Procedure requires a respondent to submit evidence to the RTB as soon as possible and no later than 7 days before a hearing. As the evidence was not submitted at least seven days prior to the hearing the late evidence was set aside. The landlord was at liberty to provide oral testimony in relation to this evidence.

At the start of the hearing it was agreed that the Notice ending tenancy was issued on March 11, 2015 and received by the tenant on that date. Therefore, as the latest day to dispute the Notice fell on a weekend I determined the application was made on time as the tenant applied on the next business day.

The application was amended to include the legal name of the landlord as set out on the Notice ending tenancy issued by the landlord.

Issue(s) to be Decided

Should the *1 Month Notice to End Tenancy for Cause* issued on March 11, 2015 be cancelled?

Background and Evidence

This tenancy commenced on October 15, 2014, rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence. The agreement includes a separate set of pet ownership rules which was signed by the parties on October 14, 2014. The tenancy agreement includes term 21, a general term that references the Guide Animal Act and that a pet may only be kept in the rental unit in accordance with the pet ownership rules and regulations.

Section 18 of the pet ownership rules is entitled “removal of pet.” The clause sets out the right of the landlord to require a tenant to remove a pet if the tenant breaches the rules, such as allowing the pet to urinate or defecate within the building or causes noise which disturbs others.

The parties referenced a previous decision issued in relation to a past Notice ending tenancy. The landlord said that the March 4, 2015 decision (see file no. on cover page) determined the landlord could not rely on a fixed-term to end the tenancy. The March 4, 2015 decision was viewed and briefly discussed with the parties. The tenant had applied to cancel a *2 Month Notice to End Tenancy Because the Tenant does Not Qualify for Subsidized Rental Unit*. The March 4, 2015 decision made no determination on the issue of the end of tenancy based on a fixed-term. The section of the analysis referencing the fixed term was read to the parties. This stance was taken in the March 4, 2015 decision as matter of fairness as the Notice issued and disputed by the tenant was for a different reason than that intended by the landlord.

The landlord has now issued a *1 Month Notice to End Tenancy for Cause* and has not relied on an end of a fixed-term as the reason. The parties agreed that the tenancy is now a month-to-month term.

The landlord and the tenant agreed that the *1 Month Notice to End Tenancy for Cause* was issued and received by the tenant on March 11, 2015 and had an effective date of April 30, 2015.

The reasons stated for the Notice to End Tenancy were that:

- that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- that the tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice to do so.

The landlord pointed out that the tenant had lived on another floor of the building and that issues related to her dog pre-existed the current tenancy. The landlord said they were dealing with the same building, the same tenant and that once they moved the tenant to a new unit the same building issues that occurred during the last tenancy continued. The landlord viewed the problems experienced during the previous tenancy as adding weight to the current Notice issued to the tenant.

The landlord said that the tenant's guide dog has caused on-going problems with barking, being off-leash in and around the building and urinating and defecating in the hallways. The landlord stated that the problems related to the dog and a disturbance caused on February 12, 2015 constitute cause to end the tenancy for both reasons indicated on the Notice issued to the tenant.

The landlord submitted staff emails that set out dates they had received complaints about the tenant's dog. On November 14 and December 15, 2014; January 8 and 27, 2015 a record of pet complaints was recorded in an email by a staff member to the manager. On January 7, 2015 a staff member emailed the landlord to report she had seen the tenant's dog off-leash in the hall and that another tenant had to take the dog back to the owner.

Staff member J.J. sent an email to the landlord on February 18, 2015 to report the dog was never on a leash and that it runs in the hall, barking and that the tenant then yells at the dog in an attempt to control it. The tenant also allows the dog to leave her ground floor unit and lets it run across the road and around the property and then yells for the dog to return.

A February 18, 2015 email to the landlord by a staff member set out additional complaints received between November 17 2014 and January 28, 2015. Other occupants reported the tenant yelling at the dog, the dog being off-leash and loose on the property. On November 29, 2014 a staff member spoke to the tenant and directed her to keep the dogs on a leash. The tenant was informed that when she yelled at the dogs she was disturbing other occupants.

The landlord submitted copies of letters issued to the tenant. On November 26, 2014 a letter was issued reminding the tenant that she had been asked to remove a second, unapproved dog from her unit. The letter reminded the tenant that the landlord had talked to the tenant on November 10, 2014 and told her the dog must be removed by November 15, 2014. The tenant was then given until November 27, 2014 to remove the unapproved dog or face a Notice to end tenancy. There was no dispute that the dog was removed no later than November 25, 2014.

When complaints continued in relation to the one dog remaining in the tenant's unit the landlord issued a January 23, 2015 letter, a copy of which was supplied as evidence. This letter warned the tenant that she continued to breach the rules governing pets by

allowing her pet to roam the hallways unattended and unleashed. This had resulted in the pet urinating and defecating in the halls.

The January 23, 2015 letter explained that multiple complaints had been made and that the tenant was ignoring warnings to keep her pet on a leash when in common areas. The tenant was informed that as a result of the problems with her dog she must remove the dog from the property. If the tenant did not wish to remove her dog she was given the choice of terminating her tenancy. The landlord explained that if the tenant did not accept one of these two options a Notice to end tenancy would be issued. The tenant was given until February 27, 2015 to remove the dog or decide to vacate.

On January 29, 2015 another letter, regarding a Notice to end tenancy, was issued to the tenant. As the tenant had told the landlord she did not wish to remove her dog or to vacate the landlord informed the tenant the tenancy would end on March 30, 2015; the end of the fixed-term. A Notice to end tenancy accompanied the letter. The tenant disputed the Notice; and the March 4, 2015 hearing was held.

The landlord then issued the March 11, 2015 Notice to end tenancy, as the Notice issued on January 29, 2015 did not support the reasons upon which the landlord wanted to rely upon to end the tenancy and not upheld at the hearing.

On April 21, 2015 the landlord received a note from another occupant of the building, outlining times this person had seen the tenant's dog running loose. Once on April 10, 2015 the dog was seen loose in the parking lot. Four incidents allegedly occurred on April 16, 2015, when the dog was seen running loose in the hallway or parking lot. The landlord said that this report causes concern as it appears the problems with the dog are re-emerging.

The landlord testified that since the March 4, 2015 hearing the tenant has improved control over the dog.

The resident manager testified that in the past there had been several conversations with the tenant in relation to the tenant's dog running loose and causing a disturbance. The resident manager could not provide any dates that these conversations occurred. The resident manager, when questioned by the tenant's counsel, said that he could not recall the last time the dog was seen off-leash and he agreed that he could not recall any problems over the past few months versus what was a constant problem in the past.

There was no dispute that on February 12, 2015 a disturbance occurred on the tenant's patio. The tenant's grandson was visiting and was so disruptive that the tenant called the police. There was agreement that the grandson has not returned to the property except on one occasion. The tenant did not allow her grandson entry to her unit and said that he is not to have contact with her. The landlord submitted that this incident, with the tenant's relative yelling and swearing, disrupted other occupants. The landlord

said that when first questioned about this incident the tenant initially denied knowing who the male was that caused the disturbance.

A letter written by another occupant of the building expressed concern that the screaming lasted from 9 p.m. until midnight on February 12 2015. A February 25, 2015 letter written by a neighbour explained she had witnessed the disturbance that occurred on February 12, 2015. This person heard the tenant tell the visitor to get out. The police arrived and removed the person. This occupant saw the male at the unit again the next afternoon, when there was another loud confrontation.

A letter written by another occupant on February 26, 2015 confirmed having previously seen the male who caused the disturbance at the tenant's unit. The occupant had not seen the individual in the recent past. The note also confirmed that the tenant's dog had been quieter.

The tenant provided information on her health challenges and the fact that the current living situation is best for her. The tenant's dog assists her and it is not an option to remove the dog.

The tenant said that on each occasion that she has received written notice of problems she has responded. The tenant removed the second dog in November, 2014; prior to the deadline given by the landlord. She acknowledged verbal warnings had been given in relation to the second dog and that she responded to the written notice.

The January 23, 2015 letter was the first written notice given in relation to the tenant's dog causing problems and it required the tenant to remove her dog. The tenant agreed that on several occasions she had been told her dog was disturbing others. The tenant also agreed that on two occasions her dog had had an accident in the hallway and that she cleaned it up. These incidents both happened during the previous tenancy, as she had just moved into the building and her dog was not familiar with the surroundings.

The tenant's counsel referred to RTB policy setting out breach of a material term. Counsel said that neither letter given to the tenant expressly stated that the tenancy was to end as the result of breach of a material term. The tenant considers it unreasonable that the tenancy could end based on several incidents that might be foreseen when pets are allowed in a rental unit. It is possible for a pet to escape and for accidents to happen. To find these incidents so important as to be able to end a tenancy fails to support the pet terms as material to a tenancy. A reasonable person would not expect to be evicted if their pet escaped and had an accident in the common area. This occurred on two occasions and on both the tenant cleaned up after her dog.

Counsel submitted that the choices given to the tenant were not reasonable as she needs her guide dog and if evicted she would have to live in her vehicle. Since the January 23, 2015 letter the tenant's dog has been leashed at all times. The tenant said she avoids using the hallway and exits with her dog via her ground-level patio.

The information given to the landlord of problems in April are anonymous and include a complaint of the tenant's dog running on property that does not belong to the landlord. The tenant was not given a chance to respond to these allegations prior to the hearing.

Counsel stated that on each of the two occasions the tenant has been given written notice she has complied. When given a time by which she must comply the tenant does so.

In relation to the February 12, 2015 incident the tenant took steps to remove her grandson and no longer allows him into her unit. There is little evidence that the tenant's dog is interfering with the other occupants of the building and that ending the tenancy based on a single incident that the tenant resolved by calling police is not reasonable.

The landlord responded that the breach of a material term was insinuated; that it was a difference in semantics. Breach means a material term of the tenancy even though the term was not specifically cited in the letters.

Upon questioning by counsel the building manager confirmed there had been numerous conversations with the tenant and that he had seen the dog off-leash dozens of times. However, he could not recall the last time he saw the dog unattended.

The landlord said that problems with the dog and the February 12, 2015 disturbance led the landlord to issuing the Notice. The tenant will acknowledge issues and will then deny responsibility. Now that complaints have been made in April the landlord is concerned the problems will re-emerge. The tenant cannot see if her dog is urinating when she allows it roam in the hall unattended.

The tenant said that she does admit to problems that have occurred, but will not admit to allegations related to allegations that did not happen.

Analysis

In a case where a tenant has applied to cancel a Notice to end tenancy for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or breached a material term of the tenancy agreement after written notice was given.

I find that to go back in time to a previous tenancy would breach the standard of fairness. If there had been problems during a past tenancy the landlord was at liberty to deal with those issues at that time. Past tenancy issues cannot be brought forward to a different tenancy. While the landlord, tenant and building are the same, the parties have entered

into a new contract which does not allow either party to co-mingle current tenancy issues with a previous contract.

RTB policy suggests that a material term of a tenancy is so important that the most trivial breach of that term gives the other party the right to end the agreement. When considering whether a term is material an arbitrator must focus on the importance of the term in the overall scheme of the tenancy versus the consequences of the breach. It is up to the person alleging the breach to provide evidence supporting the suggestion of a material term.

When a party wishes to rely upon a material term to end the tenancy they must:

- inform the other party of the problem;
- state that they believe it is a breach of a material term;
- state that the problem must be fixed by a deadline; and
- state that if not fixed by that deadline the tenancy will end.

Neither of the letters given to the tenant indicated that the tenant had breached a material term of the tenancy. Semantics are important and I find that policy provides a process that requires a specific warning referencing a material term. It is not unreasonable to find that the terms related to a pet were allegedly being breached; however, it is important to set out the material term in question.

In relation to significant disturbance or unreasonable disturbance, there does appear to have been a history of the landlord receiving complaints regarding the tenant's dog running loose. Some of the complaints stem from a previous tenancy, which I have determined has no bearing on the current tenancy. It was not possible to determine if some of the conversations that staff say occurred with the tenant took place prior to October 14, 2014 or not. There was an absence of any record of dates the tenant was approached, save one on November 29, 2014. The tenant did say that there had been several conversations.

Some of the problems related to the presence of an unapproved dog which was removed in November 2014. I find as a result of the passage of time, the presence of that dog, in breach of the tenancy agreement terms would have no bearing on the Notice issued in March 2015. Once the tenant was given written notice that included a date for removal of the dog the tenant complied.

The single incident that occurred on February 12, 2015 was an event which was ended when the tenant called the police. The tenant has taken steps to ban that person from the rental unit; what I find is a responsible step as a tenant is responsible for disturbances caused by a guest. Supporting eviction based on single disturbance that was ended with the tenant calling police fails to meet the standard of significant interference or unreasonable disturbance sufficient to end a tenancy. The person had

been allowed in the rental unit by the tenant but she took steps to appropriately deal with the disturbance.

If the February 12, 2015 disturbance was a breach of material term then written warning of the breach would have been expected, as set out above, with any repeated occurrences forming a basis for possible eviction. This did not occur. This event occurred on February 12, 2015 and the Notice to end tenancy was issued one month later, with no repeated incidents of this nature to date.

In the absence of dates or even a range of dates that the tenant's dog has been unleashed, running on the property and disturbing others I find that there are only general complaints that currently fail to support the end of the tenancy. I would expect to see an investigation of allegations, dates and times staff spoke with the tenant, dates it was determined the tenant's dog had urinated or defecated in the hallways, with these presented to the tenant for response. There was evidence of the staff exchanging information on reports of the dog being loose but there was no evidence before me that this information was passed on to the tenant.

The landlord's resident manager could not provide any specific details in support of the allegations other than there had been dozens of occurrences of the dog running loose and causing problems. The resident manager was able to say that for at least the past two months there had not been any problems.

There was little evidence that the dog was causing a disturbance to others. Several letters of complaint written by other occupants were issued prior to the start of this tenancy.

I gave no weight to the anonymous allegations made regarding the dog being loose in April. When facing allegations a party is entitled to an opportunity to respond to the accuser and at the very least to be given a detailed history of specific events that are alleged. When the landlord is ending the tenancy based on the evidence of anonymous complainants, in the absence of any corroboration, I find that the principle of fairness overweighs anonymous allegations.

Therefore, in the absence of detailed evidence in support of the allegations related to the dog I find, on the balance of probabilities, that the landlord has failed to prove the tenant's dog has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Therefore, I find that the *1 Month Notice to End Tenancy for Cause* issued on March 11, 2015 is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I find it is important to reiterate the responsibilities of the tenant. There is no doubt the tenant is aware that her dog may not roam free at anytime, anywhere on the residential property. If the tenant wishes to take her dog to property that is not owned by the

landlord she must accompany her leashed dog off of the residential property. Releasing the dog to run through the residential property or in the parking lot is prohibited.

The tenant is strongly warned that a failure to comply with the pet rules may well result in end of the tenancy in the future. A dog may escape from a doorway, but given past incidents the tenant now understands that she must ensure her dog is controlled when she is opening her door. Repeated barking and the tenant yelling after her dog are obviously not in the best interests of maintaining this tenancy and, if found to be occurring, could result in an unreasonable disturbance to other occupants.

Conclusion

The *1 Month Notice to End Tenancy for Cause* issued on March 11, 2015 is of no force or effect.

This decision is final and binding and 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 05, 2015

Residential Tenancy Branch

