



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services, Incorporated
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RR

Introduction

The tenant applies to cancel a one month Notice to End Tenancy served April 21, 2015 and for a rent reduction claiming that the landlord has failed to effect repairs, provide a service or a facility.

The Notice claims that the tenant or another person permitted by him on the property has,

- Significantly interfered with or unreasonably disturbed another occupant or the landlord,
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord,
- Put the landlord's property at significant risk.

The Notice also claims that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security safety or physical well-being of another occupant or the landlord and that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Lastly, the Notice claims that the tenant has not paid a security or pet damage deposit within 30 days as required by the tenancy agreement.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that there is good cause for ending this tenancy for any of the reasons

listed in the Notice? Does that evidence show that the tenant is entitled to a rent reduction for a breach of the landlord's obligation to repair?

Background and Evidence

The rental unit is a three bedroom apartment in a 41 unit apartment building. The tenancy started in October 2014. The monthly rent is currently \$950.00, due on the first of each month, in advance. The landlord holds a \$475.00 security deposit.

The landlord was not able to produce a written tenancy agreement between the parties. The tenant says that there is one but he cannot find it.

The tenant confirms that he is the only tenant, though there are other occupants living in the rental unit from time to time.

The landlord's representatives testify that the central problem and the reason for the Notice is that the tenant has a dog and dogs are not permitted in the apartment building. They say that two or three tenants in the building do have dogs but that is because they had the animals before the dog prohibition was implemented in the year 2007 and have therefore been "grandfathered" so as to allow them to keep them.

The landlord sent the tenant a letter dated March 10, 2015 informing him that it did not "allow dogs at any time" and giving him until March 11th to get rid of the animal.

The tenant says that because of his psychological disabilities he has the dog as an "assistance dog." He did not provide any medical or other expert evidence in this regard nor argue or show that the animal is a "guide animal" within the meaning of the *Guide Animal Act*, RSBC 1996, c. 177.

The tenant provided a list of thirteen items of "neglected repairs" that he says the former building manager agreed to attend to. He says that his move-in was delayed from October 1 to October 15, 2014 to allow the landlord to attend to them but it was not done. He did not pay rent for that fifteen day period.

The landlord's representatives say that the first time they saw the list was when the tenant provided it between the hearing dates of this dispute: June 9th and June 30th. They say they are reviewing the list and attending to determining what repairs are required of the landlord.

Analysis

Unless otherwise agreed a tenant, having the right to exclusive possession and occupation of his rental unit, is entitled to use his premises in the ways normally associated with a home. That includes having a pet.

A landlord may restrict that use by agreement with the tenant and often does so out of consideration for the increased wear and tear that can be caused by a pet or out of consideration for other tenants who may not be “pet friendly” or may have allergies caused by pet hair, dander and the like.

Section 18 of the *Residential Tenancy Act* (the “Act”) provides,

Terms respecting pets and pet damage deposits

- 18** (1) A tenancy agreement may include terms or conditions doing either or both of the following:
- (a) prohibiting pets, or restricting the size, kind or number of pets a tenant may keep on the residential property;
 - (b) governing a tenant's obligations in respect of keeping a pet on the residential property.
- 2) If, after January 1, 2004, a landlord permits a tenant to keep a pet on the residential property, the landlord may require the tenant to pay a pet damage deposit in accordance with sections 19 [*limits on amount of deposits*] and 20 [*landlord prohibitions respecting deposits*].
- (3) This section is subject to the rights and restrictions under the *Guide Animal Act*.

Putting up a sign restricting tenants from keeping pets will not suffice because it is not evidence that a tenant has agreed to it.

After a tenancy has started a landlord may demand a pet damage deposit under subsection (2), above, to permit a tenant to bring in a pet, but that provision only applies to tenant who needs permission, namely, a tenant who has signed a tenancy agreement requiring the permission of the landlord before keeping a pet in the rental unit.

A landlord who maintains that a tenant is prohibited or restricted from having a pet has the initial onus to prove it. Production of a written tenancy agreement is the obvious proof.

The landlord in this case has placed itself in a very difficult position by not having or retaining any written tenancy agreement with the applicant. Section 6(3) of the *Act* provides,

- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.**

(emphasis added)

In this case the landlord has failed to show a term of the tenancy agreement that clearly communicates that the tenant is prohibited from keeping a dog.

A tenant with a pet may still find himself evicted because of the actions of the pet. Residential Tenancy Policy Guideline 28 “Pet Clauses” states,

It is important to note that whether or not there is a pets clause in a tenancy agreement, if a pet causes extraordinary damage, unreasonably disturbs the enjoyment of other occupants of the property or threatens the safety or other lawful rights or interests of the landlord or other occupants, the tenant might be given a notice to end the tenancy.⁴ Similarly, if a pet causes damage that might be less than “extraordinary damage”, the tenant might be given a notice to end the tenancy if the damage is not repaired within a reasonable time after the tenant has been given written notice to do so by the landlord.

In this case there is some evidence that the tenant’s dog, apparently a “pit bull,” lunged at the dog of another tenant. However, that incident occurred after the eviction Notice was issued and so, even if it was a serious event, it cannot serve as a reason for giving the Notice.

In result, the landlord has not established any of the grounds cited in the Notice given to end this tenancy. The Notice is cancelled.

In regard to the tenant’s claim for repairs, it was apparent at hearing, and I find that as of the date of the tenant’s application, the landlord had not yet been given reasonable notice of the tenant’s complaints about repairs and so the tenant’s application was premature. The landlord now has formal notice of the thirteen items complained of (at least one, the intercom item, has been attended to) and can investigate and take what steps it considers necessary.

I grant the tenant leave to re-apply for a repair order and/or a rent reduction in the event of a dispute about the landlord’s efforts to address the repair issue.

Conclusion

The tenant's application to cancel the one month Notice to End Tenancy dated April 21, 2015 is allowed. The Notice is cancelled.

The tenant's application for a rent reduction is dismissed with leave to re-apply.

There is no claim for recovery of a filing fee.

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: June 30, 2015

Residential Tenancy Branch

