



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNSD, OLC, FF

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; orders for the landlord to comply with the Act, regulations or tenancy agreement; and, transfer of a pet deposit to this tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I amended the tenant's Application as the tenant named an occupant as a tenant in filing this application; and, the tenant named another respondent as a landlord. I determined that the occupant is not a tenant and I excluded him as a named party to this dispute. I was also satisfied that the second named respondent does not act as an agent for the landlord and I excluded her as a named landlord.

During the hearing, the parties resolved a dispute with respect to a pet deposit and I have recorded the agreement by way of this decision.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is it necessary to issue orders for compliance to the landlord?
3. What is the agreement with respect to a pet deposit?

Background and Evidence

The month to month tenancy commenced April 1, 2015. The tenant is required to pay rent of \$600.00 on the first day of every month. The rental unit is a two bedroom unit that the tenant occupies with her husband and baby. The tenancy agreement is the standard agreement produced by the Residential Tenancy Branch for landlord's to use if they so choose. The tenancy agreement does not include any addendum or additional terms.

1 Month Notice to End Tenancy for Cause

On May 4, 2015 the tenant was served with a 1 Month Notice to End Tenancy for Cause with a stated effective date of June 30, 2015 (the Notice). The Notice indicates the reason for ending the tenancy is because the: *Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*

On May 2, 2015 the landlord issued a letter to the tenant to inform her that her husband was not permitted to reside in the unit and that he was required to move out by May 4, 2015. The tenant responded the following day to advise the landlord that she was not precluded from having her husband reside with her, that she had notified the landlord's assistant that her husband moved in with her when she paid rent on April 27, 2015 and that her husband would not be moving out. On May 4, 2015 the landlord served the tenant with the Notice. The tenant filed to dispute the Notice within the time limit for doing so.

The landlord submitted that the reason for issuing the Notice is because the landlord received two complaints from other tenants that the tenant's husband was heard yelling at their baby at approximately 2:00 a.m. on or about April 27, 2015. The landlord met with the tenant shortly thereafter and the tenant acknowledged that her husband was frustrated with the baby keeping him awake.

The landlord acknowledged that he has not received any further complaints concerning the tenant or her husband since the incident of April 27, 2015. However, the landlord still seeks to end the tenancy as the landlord submitted that two other tenants in the building threatened to end their tenancy if the tenant's husband is permitted to reside at the property; and, the landlord fears a reoccurrence in the future that may be even worse.

The tenant and her husband acknowledged that the tenant's husband shouted in frustration when the baby was crying in the early morning hours and that it is inappropriate to do that and disturb their neighbours; however, the tenant submitted that it was not as bad as made out by the landlord. The tenant's husband testified that he has since seen a counsellor and developed coping techniques to avoid this sort of behavior from reoccurring. The tenant's husband described the techniques that he intends to employ to deal with his frustration in the future. The tenant and her husband also testified that they apologized to their neighbours and pointed out that there have been no other disturbances since that date. The tenant is of the position that the tenancy should not be ended for this one incident especially considering action has been taken to avoid this from happening in the future.

Orders for compliance

The tenant submitted a copy of a letter the landlord gave her requiring her husband to vacate the rental unit. The tenant submits that she is not precluded from having an occupant reside with her under the tenancy agreement and the landlord should not require her husband to move out.

The landlord's assistant submitted that when the tenant applied for tenancy she informed the landlord that the unit would be occupied by her and her baby, as seen on the tenancy application form. There was also discussion about what the tenant would do if her husband moved in and caused problems to which the tenant stated she would ask her husband to leave. This discussion and the events of April 27, 2015 are the reasons the letter was issued.

The tenant submitted that during the discussion with the landlord prior to signing the tenancy agreement the tenant had agreed to inform the landlord if her husband moved in with her. The tenant stated that she did notify the landlord's assistant when she paid rent on April 27, 2015.

Pet deposit

Both parties provided consistent testimony that the tenant and her husband had previously occupied this same rental unit under a previous co-tenancy agreement and they had paid a \$300.00 pet deposit under that previous tenancy agreement. The tenant and her husband went through a period of separation where the female tenant moved out of the building to stay with her parents and her husband moved to a different unit in the building with his mother. The tenant seeks to have the pet deposit applied to the tenant's current tenancy agreement.

The landlord's assistant described the pet deposit from the previous tenancy as being "in limbo" as the tenant's husband had only given verbal permission for the landlord to make deductions when he left the rental unit and it was not transferred to his mother's tenancy agreement even though the tenant's husband took the cat to that unit temporarily.

The tenancy agreement does not preclude the tenant from having a pet and the cat has been residing in the rental unit since the tenant's husband moved in with her.

After some discussion about the obligations of both parties with respect to handling of deposits, the parties mutually agreed to the following:

1. A deduction of \$33.60 is authorized as a deduction from the pet deposit for flea treatment performed in the unit after the previous tenancy ended; and,
2. The current tenancy agreement shall reflect payment of \$266.40 as a pet deposit.
3. The pet deposit paid under the previous tenancy agreement is considered to be disposed of by way of term 1 and 2 above.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

1 Month Notice to End Tenancy for Cause

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Section 47 of the Act provides that a tenancy may be ended if the tenant or a person permitted on the property by the tenant has acted in such a way that is unreasonably disturbing or significantly interferes with other occupants of the residential property. It is important to note that in interpreting legislation every word must be given meaning. As such, the inclusion of the words “unreasonably” or “significantly” must be given consideration and in order to end a tenancy for this reason the landlord must be able to prove not only that a disturbance occurred but that it was unreasonable or significant.

As provided above, and as explained to the tenant during the hearing, her tenancy may be ended if her husband, who is a person the tenant has permitted on the property, acts in such a way so as to unreasonably disturb or significantly interfere with other tenants or occupants of the residential property. Therefore, it is before me to determine whether the actions of the tenant's husband on April 27, 2015 were such that it was unreasonably disturbing or a significant interference to other tenants and occupants of the residential property.

After hearing from all parties, I accept that other tenants were disturbed by the tenant's husband's inappropriate and loud behaviour on April 27, 2015; however, I find the landlord have not provided sufficient evidence to satisfy me that the actions were unreasonably disturbing or of significant interference. The landlord did not produce any witnesses during the hearing or sworn statements of those persons affected leaving me with the version of events as presented by the tenant and/or her husband. In making this finding, I have also taken into consideration that the landlord has received no other complaints about the noise or the actions of the tenant or her husband since that incident. Further, I am optimistic that the tenant's husband has taken action to learn coping techniques to avoid recurrence of this type of behaviour.

In light of the above, I cancel the 1 Month Notice that was issued on May 4, 2015 with the effect that this tenancy shall continue at this time.

Although I have cancelled the 1 Month Notice, the tenant is now considered fully aware that behaviour of people she permits on the rental unit is a basis to end her tenancy under the Act and the tenant is strongly cautioned that reoccurrence of this type of behaviour may be grounds to end the tenancy in the future.

Order for compliance

The Act requires that the landlord reduce the agreed upon terms of tenancy terms to writing. What is discussed during negotiations prior to entering into an agreement is called parol evidence and is only considered relevant in limited circumstances such as when a term in an agreement is ambiguous. The landlord prepared a written tenancy agreement that was signed

by both parties. Upon review of the written tenancy agreement I find that its terms are clear and unambiguous. With respect to have guests and occupants, the tenancy agreement provides that an unreasonable number of occupants may be grounds for ending the tenancy but the agreement does not preclude the tenant from having occupants reside with her in the rental unit. Thus, I find that so long as the number of occupants is reasonable the tenant is permitted to have other occupants reside with her.

In this case, the tenant shares a two bedroom apartment with her husband and baby. I find this is a reasonable number of occupants.

In light of the above, I order the landlord to cease demands that the tenant have her husband move out of the rental unit.

As indicated previously in this decision, the landlord's remedy if the tenant's husband's behaviour is unreasonably disturbing or significantly interfering with other occupants is to end the tenancy.

Pet deposit

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record such an agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached between the parties during the hearing with respect to a pet deposit and I make the terms an Order to be binding upon both parties. As such, the matter of the pet deposit from the previous tenancy is considered to be disposed of and the tenant is credited with payment of a pet deposit in the amount of \$266.40 for this tenancy.

Filing fee

The tenant was largely successful in this Application; however, in recognition that the tenant's husband's behaviour was disturbing I award the tenant recovery of one-half of the filing fee, or \$25.00. The tenant is authorized to deduct \$25.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The 1 Month Notice issued on May 4, 2015 has been cancelled and the tenancy continues at this time. The tenant has been cautioned that the actions of her husband may be grounds to end her tenancy in the future.

The landlord has been ordered to cease demands that the tenant's husband move out of the rental unit.

The parties mutually agreed during the hearing that a balance of a previously paid pet deposit in the amount of \$266.40 shall be transferred to this tenancy and the pet deposit of the previous tenancy agreement is considered to be disposed of.

The tenant has been awarded recovery of one-half of the filing fee paid for this Application, or \$25.00. The tenant has been authorized to deduct \$25.00 from a subsequent month's rent in satisfaction of this award.

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 18, 2015

Residential Tenancy Branch

