



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for cause, and requesting recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a 1 month Notice to End Tenancy that was given stating the following reason:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Background and Evidence

The landlord testified that:

- The tenants have breached the pet clause of the tenancy agreement which states:
 - “Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal including a dog, cat, reptile, or exotic animal, domestic or wild, furbearing or otherwise.”

- Originally it was agreed that the tenants could have one small dog permanently, and one large dog could stay in the premises temporarily.
- Subsequently the tenants failed to remove the large dog and it has stayed there for the full term of the tenancy.
- The tenants have also subsequently brought cats into the rental property.
- The tenants did not get any written permission from the landlords to have the second large dog on a permanent basis or to have the cats at the rental property.
- The tenants were therefore given a breach letter informing them they were required to get rid of the extra pets; however they failed to do so and therefore a one-month Notice to End Tenancy was given.
- They are therefore requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued.

The tenants testified that:

- Before renting the rental unit they asked if this was a pet friendly property and they were informed that it was.
- When they first moved into the rental property they were given permission to have a small dog, and to temporarily have a large dog that they were keeping for their son.
- The large dog was originally going to be moving when their son moved to his own place; however that never occurred, and they ended up keeping the large dog.
- The property manager at that time was well aware of the fact that they had kept the large dog as they specifically discussed it with him.
- The property manager did inspections of the property every three months for the full term of the tenancy and never made any mention of the need for them to remove the large dog.
- They also obtained two kittens in 2014, and again they inform the property manager, and the property manager was well aware of the fact they had the cats.
- Again, as stated above, even though the property manager made inspections of the property every three months, he never stated that having the pets was a breach of the tenancy agreement and had to be removed.
- The property manager even interacted with the pets during the visits so he was well aware of the fact that the pets were in the property.
- They therefore believe that the doctrine of estoppel is in effect in the landlords can no longer rely on the pet clause to end this tenancy.

Analysis

It is my finding that the landlord is prevented from ending this tenancy for breach of the pet clause, by the principle of estoppel.

In a 2005 decision of the Supreme Court of Canada, *Ryan V. Moore*, 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows.

59.... After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention:

1. The parties' dealings must have been based on a shared assumption of fact or law: estoppel requires manifest representation by statements or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of silence (impliedly).
2. A party must have conducted itself, i.e. acted, in reliance on such shared assumption, its actions resulting in a change of its legal position.
3. It must also be unjust or unfair to allow one of the parties to resile or depart from common assumption. The party seeking to establish estoppel therefore has to prove the detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

In this case it's my finding that the tenants correctly assumed, through the landlord's silence, that the landlord/property manager had provided his implied consent to the extra pets in the rental property, even though the tenants did not get written consent.

It is my decision therefore that it would be unjust to allow the landlords to end this tenancy for breach of the pet clause of the tenancy agreement.

The tenants have now been informed by the landlords that the landlords consider the pet clause a material term of the tenancy agreement, and therefore, in future, the tenants will be required to get written consent from the landlords before bringing any further pets into the rental unit.

I therefore allow the tenants application to cancel the Notice to End Tenancy, and I also allow the request for recovery of the \$50.00 filing fee.

Conclusion

I Order that the one month Notice to End Tenancy, dated May 28, 2015 is canceled and I have issued an Order for the landlord to pay \$50.00 to the tenants.

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: July 23, 2015

Residential Tenancy Branch

