



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sussex Villa
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPC, MND, FF
 Tenants: CNC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order for damage to the rental unit. The tenants sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by

The landlord clarified that he was not seeking a monetary order at this time for compensation for damage to the rental unit. As such, I amend the landlord's Application for Dispute Resolution to exclude the matter of compensation.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Background and Evidence

Both parties submitted into evidence a copy of a tenancy agreement signed by the parties on May 23, 2015 for a 1 year and 8 day fixed term tenancy beginning on May 23, 2015 for a monthly rent of \$900.00 and a security deposit of \$450.00 paid.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on July 2, 2015 with an effective vacancy date of August 2, 2015 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's

property at significant risk; and there is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of his Notice to End Tenancy the landlord has submitted a letter of complaint; letters and notices he has provided to the tenants that include the following:

- July 21, 2015 a notice from the landlord stating: "Please remove your dog out of the building, landlord gives you three more days.." [reproduced as written]
- July 9, 2014 a letter from another tenant complaining to the landlord about the odour of marijuana in the hallways. This complaint letter does not identify any specific tenant or rental unit where there is a specific problem;
- June 6, 2015 a warning letter from the landlord stating that after several verbal warnings the tenants continue to disturb their neighbours with excessive late night noise; and
- July 19, 2015 a warning letter from the landlord stating that after several verbal warnings the tenants continue to disturb their neighbours with excessive late night noise.

The landlord presented no evidence or testimony regarding any complaints of noise disturbances at any time (late night or not). I note, however, the warning letters dated June 6, 2015 and July 19, 2015 identify that the landlord believes that such disturbances warrant a breach of a material term of the tenancy.

The landlord submits that the tenancy agreement states no pets but because he spelled it wrongly the tenants refuse to accept it as a term of the tenancy. The landlord submits that when the tenancy began he allowed the tenants to keep their dog until such time as other tenants in the building who had pets left the residential property.

The tenants submit that the landlord had not provided them with a copy of a tenancy agreement until later in the tenancy and that when they signed the agreement there was no notation regarding pets and even if there was they did not sign by that term so it would not be enforceable.

The landlord submits that the tenant has caused damage to the new flooring that has been installed since the start of the tenancy because of her dancing on it. The landlord also states that the fact the tenants have a dog has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The landlord has provided no evidence of any damage to the rental unit at all.

Analysis

I first note that with the exception of the June 6, 2015 warning letter all of the warning letters and complaints are dated after this 1 Month Notice to End Tenancy for Cause. As such, I find that none of these documents are relevant to the Applications before me.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - ii. Put the landlord's property at significant risk;
- b) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

I find that, by the landlord's own testimony, the landlord is estopped from trying to end the tenancy by virtue of the tenant's having a dog because he allowed the tenants to have a dog when they moved into the rental unit.

While the landlord has submitted that they had a verbal agreement that the tenants would remove the dog when all other dogs in rental units had left the residential property he has provided no evidence at all of such an agreement.

As such, I find there is no material term in the tenancy that restricts the tenant's having this particular dog and the landlord is estopped from relying on such a term to end the tenancy.

In addition, I find that the landlord has failed to provide any evidence at all that the tenants have either has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. As such, I find the landlord has failed to establish grounds to end the tenancy.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety.

As a result, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 2, 2015 is invalid and not enforceable. I order the tenancy remains in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenants for this application. I order the tenants may deduct this amount from a future rent payment pursuant to Section 72(2)(a).

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: September 08, 2015

Residential Tenancy Branch

