Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution in which the Tenant sought to cancel a Notice to End Tenancy for Cause issued June 26, 2015 (the "Notice") and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

Only the Tenant submitted any evidence and the Landlord confirmed he had received the Tenant's evidence package. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Tenant entitled to recover the amount he paid to file the application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed November 8, 2013 between the Landlord, the Tenant and the co-tenant, K.C. (the "Tenancy Agreement"). Pursuant to the agreement monthly rent was payable in the amount of $1,500.00 on the first of the month. Clause 4 of the Tenancy Agreement provided that the tenants were to pay a security deposit in the amount of $750.00 on or before December 1, 2013. The Tenancy Agreement did not provide for payment of a pet damage deposit. The parties agreed that K.C. moved in with a dog at the commencement of the tenancy.

The Landlord testified that K.C. gave notice to end the tenancy approximately 1 year ago. The Landlord further testified that at the time he asked the Tenant to enter into a new tenancy agreement which reflected the fact she was the sole tenant and she has refused.

The Landlord then stated that the Tenant entered into a sub-tenancy with S.P. When S.P. moved in, she brought a young dog, (a "golden doodle") which the Landlord described as a "digger".

According to the Landlord, the Tenant did not seek his consent to enter into this sub-tenancy with S.P. As well, the Landlord testified that the tenancy between the Tenant and S.P. ended on poor terms such that when S.P. moved out the Tenant asked the Landlord to supervise her move to make sure that S.P. did not remove any of the Tenant's belongings.

The Landlord stated that despite S.P. moving out, the dog remained and the Tenant continues to allow S.P. to enter the rental unit with her own key for the purposes of walking the dog.

The Landlord testified that the dog is a nice dog, but a "teenager" and a "digger" and has dug approximately 15 holes in the property including under an established ceanothus (commonly referred to as a California lilac) which caused such damage that it had to be removed, as well as a large established calla lily.

The Landlord further testified that before Christmas 2014 he repeated asked the Tenant to pay a pet damage deposit when S.P. and her dog moved in and to sign a new tenancy agreement. The Landlord stated that he sent draft agreements to the Tenant who simply refused to sign.

Introduced in evidence was an email from the Landlord to the Tenant dated May 21, 2015 wherein the Landlord sets out his concerns as follows (italicized portions are quotes from the document):

- the Tenant refused to sign a new lease for six months after K.C. moved from the rental unit;
- the Tenant has refused to provide the $750.00 pet deposit as requested;
- the Tenant has refused or neglected to repair damage to the yard and garden caused by the Tenant's dog;
- the Tenant has provided keys to others;
- the Tenant's most recent roommate, S.P., was engaged in escorting, and despite moving from the rental unit, continues to enter with a key;
- the new roommate, whom the Landlord only knows by her first name "C", had a party of 25-30 people in the garden the previous weekend which is concerning to the Landlord as C is not on the Rental Agreement; and,
- the Landlord concludes the letter with the following:

> "…*The attached lease and pet deposit must be returned prior to June 1st, 2015 or I will accept your notice.*
> *Failing that I will give you notice."*

- Attached to the letter was a redrafted residential tenancy agreement between the Landlord and the Tenant providing that she was to pay a security deposit of $750.00 and a pet damage deposit of $750.00

(collectively referred to as the "May 21, 2015 email").

The Tenant responded to the May 21, 2015 email on May 28, 2015. Introduced in evidence was a copy of that correspondence and in which the Tenant writes (italicized portions are quotes from the document):

- She and the Landlord had discussions regarding a new lease in December of 2014.
- With respect to the Landlord's claim that the plants were damaged by a dog, the Tenant writes that the dog was in fact her previous "subletter's", S.P.
- She believes the Landlord "*cannot initiate a pet damage deposit after tenancy has begun…[because] [the Landlord] did not select a pet damage deposit being*

applicable at the time that co-tenant K.S., herself and K.S.'s dog, "T", it cannot be initiated at any other time."

- "*If, I were to agree to a pet damage deposit moving forward in order to rectify a situation which clearly stresses you, I would require that a Condition Inspection Report be conducted from this point forward, therefore any alleged retroactive damage would not be considered."*

Also introduced in evidence was an email from the Landlord to the Tenant dated June 6, 2015 wherein the Landlord again sets out his concerns as follows (italicized portions are quotes from the document):

- *"This is the second time you have not returned the lease as requested nor provided the pet deposit which is allowed when a tenant ACQUIRES a new pet DURING A TENANCY….so you should reread your rules and I'm talking to advisors.*

  …

  Further this is the second time I've sent you a lease reflecting your sole tenancy rather than the only lease I have which is a joint tenancy with yourself and K.S. who has been gone for almost a year. Now VOID.

  This is the second time you have for weeks and in the first instance months refused to sign a new lease POST K.S.'s departure now a year ago. This results in a diluted legal responsibility as per the lease on your part and renders your original lease void since then you've had two subletters since, neither of which you have requested in writing permission from the landlord as per the Landlord Tenant Act. You just ignore this fact as it does not suit you.

  Your original co-renter had a docile black lab. You had a subletter with a pet move in without a written request to the landlord for the subletter or the new jog a goldendoodle.

  …

  However per the Act…if you ACQUIRE a pet during the tenancy you must request a landlord permission and provide a pet deposit which I fully expect you to do…as does Statute law.

  This is SPECIFICALLY PROVIDED FOR!

  Especially since your dog has dug over a dozen BIG holes in my mature garden…killed dead, gone, dug up a year mature hardwood Ceonothus….and has more than 3 times seriously undermined and dug under my giant calla lily which is rare and expensive.

  …

After your sublet S.P. went to [other country] to follow her escort dreams….you talked at length with me about how you were going to acquire ownership of her dog, as she was cold hearedly ABANDONNING this lovely dog to followher self centred "dreams"…which you have for many months now.

This constitutes ACQUIRING a pet DURING a tenancy…Which the Landlord Tenancy Act specifically provides for. You did not own an animal dog or gerbil or a bird when you moved in when your sublet moved out you ACQUIRED her dog.
…

My exposure has effectively doubles doubled and your obligation has effectively halved. it is also not fair for me to chase miss S in [other province] or for her to bear the brunt of legal action based on the contract she's no longer liable to which you seem to think is okay
Simple not acceptable…in law, insurance wise or otherwise
…

[Reproduced as Written]

Landlord testified that he hand delivered the notice on June 27, 2016. The reasons cited in the Notice were as follows:

- The Tenant has allowed an unreasonable number of occupants in the unit/site;
- The Tenant, or a person permitted on the property by the Tenant has put the landlord's property at significant risk;
- 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;
- The Tenant has caused extraordinary damage to the unit/site or property/park;
- The Tenant has assigned or sublet the rental unit/site without the landlord's written consent; and,
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

(the "Notice").

The Tenant submitted that K.S. gave notice to end *her* tenancy on May 31, 2014. The Tenant further submitted that the Landlord did not force her to sign a new lease at the time and only asked her to sign one when S.P. moved in. The Tenant further submitted that the Landlord continued to accept her rent payments and accordingly she believed that the tenancy continued on the same terms as the Tenancy Agreement.

The Tenant stated that the Landlord never identified any damage to the garden allegedly caused by S.P.'s dog, but admitted the Landlord asked the Tenant to retain the security deposit paid by S.P. The Tenant also said that the number of holes allegedly dug by S.P.'s dog "changes all the time" from 4, to 10, to 12 and now 15. When I asked her if she was denying that the dog had dug holes she responded that the dog had in fact dug some.

The Tenant stated that her comments with respect to S.P. being an escort were "off handed comments" and further stated that S.P. was not running an escort service out of the house.

The Tenant confirmed that when S.P. moved out it was not an amicable parking. She further confirmed that S.P. had a key, but since June 2015 S.P. no longer has a key.

The Tenant submitted that as she moved into the rental unit with K.S. and her dog and the Landlord did not request a pet damage deposit at the time that she was not required to pay a pet damage deposit when S.P. moved in with her dog, or when S.P., moved out leaving the dog with the Tenant. Further the Tenant testified that she refused to provide a pet damage deposit as she believed the Landlord would simply apply those funds to the alleged garden damage. She then sated that she would pay a pet damage deposit but only if the Landlord did a new Condition Inspection Report.

When I asked when S.P. moved in, the Tenant stated that she moved in on June 1, 2014 and moved out on November 2014. When I asked when K.S. moved out, the Tenant stated May 31, 2014. The Tenant confirmed that she now has another roommate, C. who has a boyfriend who stays over often but does not live there. In any case, the Tenant confirmed that C was moving out because of the Landlord's son's loud music.

The Tenant further submitted that she was resistant to signing a new residential tenancy agreement because the Landlord intended to remove cable and insist she carry rental insurance.

Both parties gave evidence as to the other's recycling habits and whether they contributed to a rodent problem. I find it unnecessary to reproduce any of that evidence or submissions in this my decision.

I provided the Landlord an opportunity for a brief reply at which time he stated that K.S. never gave him *written* notice to end the tenancy.

Analysis

A tenant may end a tenancy provided that the notice complies with section 52 of the *Act,* which provides as follows:

> **Form and content of notice to end tenancy**
>
> **52** In order to be effective, a notice to end a tenancy must be in writing and must
>
> (a) be signed and dated by the landlord or tenant giving the notice,
>
> (b) give the address of the rental unit,
>
> (c) state the effective date of the notice,
>
> (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
>
> (e) when given by a landlord, be in the approved form.

The Landlord confirmed that K.S. did not provide written notice to end the tenancy; accordingly, she did not end the tenancy in accordance with the *Act.* Further, while she may have vacated the rental unit, she remains jointly and severally liable for the tenancy pursuant to the Tenancy Agreement.

The Landlord, when renting to the Tenant and K.S. did not request a pet damage deposit. He submitted that he did not require one as K.S.'s dog was an older docile black lab. It was within his right to request a deposit at that time, or not; it was his prerogative to assess the risk associated with K.S.'s dog.
When S.P. moved into the rental unit, she brought another dog into the rental unit and that dog appears to have remained after S.P. moved out.

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;

(b) require or accept more than one security deposit in respect of a tenancy agreement;

(c) require a pet damage deposit at any time other than

(i) when the landlord and tenant enter into the tenancy agreement, or

(ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;

(d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;

(e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

In this case, I find that the Tenant *acquired* another dog when S.P. moved into the rental unit and further, I find that she did not seek the Landlord's consent for S.P.'s dog to move into the rental unit. When the Landlord discovered that another dog had been moved into the rental unit, it was within his right to request a pet damage deposit pursuant to section 20(c)(ii).

The evidence confirms that the Landlord did not agree to S.P.'s dog moving into the rental unit and that the Landlord requested a pet damage deposit as early as May 21, 2015. The evidence further confirms that the Tenant has refused or neglected to pay the pet damage deposit as requested.

Section 47 provides that a Landlord may end a tenancy for cause if a tenant fails to pay the pet damage deposit and provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

> (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

I find that section 47(1)(a) and section 20(c)(ii) must be read in conjunction. To find that a Landlord may end a tenancy if the tenant does not pay the pet damage deposit within 30 days of the date required under the tenancy agreement at the *beginning of a tenancy*, yet not within 30 days of a request being made pursuant to section 20(c)(ii) would result in an inconsistency which is not reflective of the intent of the legislation.

In a 1992 decision of the Supreme Court of Canada, AR. *v.* Z. (D.A.), [1992] 2 S.C.R. 1025 Mr. Justice Lamer found that, "the express words used by Parliament must be interpreted not only in their ordinary sense but also in the context of the scheme and purpose of the legislation". In this case, I find that to interpret section 47(1)(a) as excluding the Landlord's right to end a tenancy when a Tenant fails to pay a security or pet damage deposit pursuant to section 20(c)(ii) would be inconsistent with the intention of the *Act.*

At the beginning of a tenancy a Landlord is able to assess the risk posed by tenants and determine whether pets will be allowed, or not, and in the event pets are allowed, if a pet damage deposit is required. That determination is regularly done by landlords based on the pet proposed by the tenants to be residing in the rental, such as when a landlord specifies a tenant may have a small dog or a cat. To suggest that a landlord who permits a particular pet (which is proposed at the outset of the tenancy by the tenants) has implicitly permitted *other* pets or *more* pets is inconsistent with the *Act* and denies the landlord the ability to assess risk.

Section 20(c)(ii) provides that a Landlord may require a pet damage deposit "if the tenant *acquires* a pet during the term of a tenancy agreement, *when the landlord agrees the tenant may keep the pet on the residential property" (emphasis added).*

In this case, the Tenant did not seek the Landlord's consent, nor did the Landlord permit the Tenant to keep S.P.'s dog on the residential property. Further, it was within the Landlord's right to request a pet damage deposit. I find that in failing to pay the pet damage deposit within 30 days of the Landlord's request, the Tenant has given the Landlord cause to end the tenancy.

For the foregoing reasons, I dismiss the Tenant's request to cancel the Notice. The tenancy will end in accordance with the Notice.

Having ended the tenancy on this ground, I need not consider the balance of the reasons articulated by the Landlord on the Notice.

The Tenant, having been unsuccessful, is not entitled to recover the filing fee.

Conclusion

The application is dismissed and the Notice upheld. The tenancy will end in accordance with the Notice.

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