



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, O (Tenants' Application)
 OPC (Landlords' Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution filed September 14, 2015, they sought to cancel a Notice to End Tenancy issued for Cause on September 11, 2015 (the "Notice") and to recover the filing fee. In the Landlords' Application for Dispute Resolution filed September 29, 2015, they sought an Order of Possession based on the Notice.

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

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Landlords entitled to an Order of Possession?
3. Should the Tenants recover the filing fee?

Background and Evidence

Both parties provided extensive evidence in support of their position. 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.

The Landlord testified that the tenancy began on April 18, 2015 as a month to month tenancy. The Tenants were required to pay rent in the amount of \$1,050.00 as well as a security deposit of \$525.00 which the Landlord continues to hold in trust.

The Landlords issued the Notice on September 11, 2015. The reasons noted on the Notice are as follows:

- The Tenant,
 - or a person permitted on the property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
 - has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords provided testimony and evidence in support of all three reasons for issuing the Notice. I will first deal with the Landlords allegation that Tenants brought pets into the rental unit without the Landlords' knowledge or consent and in doing so breached a material term of the tenancy agreement.

In support of the Notice and their application for an Order of Possession the Landlords provided the following evidence:

- a copy of the internet ad for the rental unit which clearly notes no pets are allowed in the rental;

- a copy of the Tenants' rental application in which the Tenants confirmed they do not have pets;
- a copy of the residential tenancy agreement signed by the parties on April 2, 2015 to which is attached an addendum which is also signed and dated April 2, 2015 and reads as follows:

- *Dogs, cats or any other pets are not permitted without the written consent of the landlord.*

- An email from the Tenant, B.S., to the Landlord dated May 16, 2015 wherein she writes:

"...[B.R.] and I were talking about getting a rescue dog. Would that be okay? I know we need written consent..."

- An email from the Landlord, G.T., dated May 17, 2015, wherein he responds to the Tenants request to get a rescue dog and writes:

"...A dog is not suitable for the basement suite."

- A further email from the Tenants to the Landlord, also on May 17, 2015, asking him to clarify why a dog isn't suitable for the basement suite.
- A further email from the Landlord to the Tenants dated May 17, 2015 wherein the Landlord writes:

"...As you know the ad said no pets. You signed the agreement saying no pets. There will be no pets. This is final. If you are not happy with this decision you are welcome to leave."

- An email from the Tenant, B.S., dated August 21, 2015 wherein the Tenant writes:

"...Also my sister is away working and my mom is going out of town this weekend so I'm dogsitting from Friday night until Sunday night. It's a little dog, we will keep her quiet so doesn't disturb upstairs."

Thanks

B.”

The Landlord confirmed that he did not give the Tenants written consent to bring a dog into the rental unit, and in bringing the dog into the rental unit to dog-sit, the Tenants breached the terms of the tenancy agreement.

The Landlord further testified that the Tenants have a fish tank, which was also brought in without his knowledge and consent.

The Tenant, B.R., testified on behalf of the Tenants. He confirmed they had a fish tank and allege the Landlord was aware of the tank and did not ask them to remove it. Introduced in evidence was a letter from the Tenant, B.R. wherein he writes:

“...We moved into the suite on April 18, 2015. Our rental agreement says the following, “dogs, cats or other pets are not permitted without the written consent of the landlord.” Shortly after moving in we bought a 10 gallon fish tank with a couple fish. Now fish cannot be considered pets because the tank sits on a stand and does not move. The fish don’t excrete feces on the carpet, they don’t release odours in the air, and they don’t rip apart the house. Fish sit in their tank as an ornament in our living room. [The Landlord, G.T.] knew about the fish because the following weekend we emailed him about leaving a key for [B.S.’s] sister so she can feed the fish. He acknowledged the email.

The Tenant’s letter confirms that they attempted to bring in a rescue dog and the Landlord denied their request. The Tenant then writes that the other Tenant wrote to the Landlord on August 21st about dog-sitting and gave the Landlord 3 hours to respond. When the Landlords did not respond they brought the dog into their rental unit.

The Tenant, B.R., in his letter and testimony, alleges that the Landlord attended the rental unit the following day, saw the dog, and simply asked when it would be leaving. He goes on to say that when they told the Landlord the dog would be gone “Sunday night”, the Landlord responded “OK that should be fine”.

The Landlord, G.T., denies saying that it was fine to have the dog at the rental unit until Sunday night.

Both the Landlord and the Tenant introduced evidence with respect to the Tenants’ relationship with the upstairs renter, W.W. W.W. was also called as a witness by the Landlord. This evidence goes to the two other reasons noted on the Notice and I find it

is not necessary to deal with that evidence in this my decision. I will, however, note the following.

The upstairs tenant, W.W., has a child who is severely allergic to cats, horses and bees. W.W. has a small dog who does not have fur, but hair such that the dog is a hypoallergenic dog. W.W. testified that had the Tenants brought a cat into the rental unit, it would have contaminated the rental property and it would have taken six months to eradicate the allergens which could have been fatal to her daughter.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords have provided sufficient evidence to show that the Tenants have breached a material term of the tenancy agreement.

I further find that the Tenants were well aware of the Landlords strict no pet's position, which was confirmed in the internet posting advertising the rental unit, the tenancy agreement and addendum, and the Landlords' unequivocal response to the Tenants' request to take in a rescue dog. Accordingly, I find that the Tenants were provided sufficient notice as to the Landlords' position with respect to pets.

The Tenants agreed to rent the rental unit knowing they could not have pets without first obtaining the Landlords' written consent. The Tenants, by obtaining a fish tank, knowingly breached a material term of the tenancy. I do not accept the Tenants' argument that a fish is not a pet. While it is true that fish are contained in an aquarium, aquariums pose additional risk associated with water damage as well as odour.

The Tenants, in taking in a family member's dog, when they were acutely aware of the Landlords' position with respect to a dog in the rental unit, flagrantly disregarded the Landlords' clear instructions.

I find the Tenants were provided with sufficient warnings by the Landlords with respect to the Landlords' "no pets policy". The email communication between the parties on May 16 and May 17, 2015 reiterated the Landlords' position and provided the Tenants with the clarification they sought. The Landlord, G.T., advised the Tenants that if they were unhappy with this policy, they could move from the rental unit. This communication was unambiguous.

The Tenants made a choice not to comply with the Landlords' clear instructions and brought a family member's pet into the rental unit. In doing so they breached a material

term of the tenancy. As a result, I find that the Notice, issued on September 11, 2015, is a valid notice to end tenancy. Having upheld the Notice on the ground that the Tenants breached a material term, I need not consider the other two reasons articulated on the Notice. Therefore, the tenancy will end in accordance with the Act.

I dismiss the Tenants' application to cancel the Notice. Having been unsuccessful, the Tenants are not entitled to recover the cost of filing their application from the Landlords.

I grant the Landlords' request for an Order of Possession which will be **effective 2 days after service** on the Tenants. The Landlords must serve the Tenants and may file and enforce the Order in the B.C. Supreme Court should that be necessary.

Conclusion

The Tenants breached a material term in the tenancy agreement when they obtained fish, and brought a family member's dog into the rental unit. The Tenant's application to cancel the Notice is dismissed as is their request to recover the filing fee.

The Landlords are entitled to an Order of Possession effective 2 days after service.

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: November 20, 2015

Residential Tenancy Branch

