



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Notice to End Tenancy for cause.

The parties attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Notice to End Tenancy for cause?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2013. This started as a fixed term tenancy and on August 01, 2013 it reverted to a month to month tenancy. Rent for this unit is now \$676.00 per month due on the 1st of each month.

The landlord testified that the tenant was served with a One Month Notice to End Tenancy for cause (the Notice) on October 03, 2015. The Notice has been provided in evidence and this indicates that the tenancy will end on November 30, 2015. The Notice gave the following reason to end the tenancy:

The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant has kept two cats in her unit without the landlords' written permission. The tenancy agreement stipulates that the tenant must obtain the landlords' written agreement and the tenant failed to notify the landlord that she had two cats when she moved into the unit. The addendum to the tenancy agreement also states that the landlords' approval must be gained before any pets are allowed. The landlords found out the tenant had one cat when the female landlord went to the tenant's door in January 2015 and a cat ran out of the door into the hall. The tenant was served a breach letter in May, 2015, giving the tenant 30 days to remove the cat.

The landlord testified that the tenant did not comply with this breach letter and in August, 2015 the landlord found out that the tenant had two cats in the unit. At first the tenant did not want to tell the landlord how many cats she had but later did inform the landlord that she has always had two cats. A second breach letter giving the tenant 30 days to remove the cats was issued to the tenant. A Notice of Entry was served upon the tenant stating there would be an inspection of the unit on September 27, 2015 to determine if the cats had been removed. The tenant had still not removed the cats and a third letter and the Notice were then served upon the tenant on October 03, 2015.

The landlord testified that when the tenant had initially inquired about renting in the building she came alone and viewed two units one with a rug and one with laminate flooring. The tenants choose the unit with the rug and never made any mention that she had cats. If the tenant had mentioned the cats she would have been asked to sign a pet policy and pay a pet deposit. Since September 01, 2015 the landlord has notified all

tenants that they are no longer a pet friendly building and no further tenants will be allowed to have pets. Any tenants with existing pets will not be permitted to replace those pets. As the tenant never mentioned she had cats the landlord feels the notice should not be set aside and request an Order for the tenant to remove the pets.

The tenant testified that she does have two cats in her unit and they have been with her since she moved in in May 2013. The tenant testified that before she signed the tenancy agreement she asked the female landlord about the pet policy and was told it was not a problem as this was just a standard tenancy agreement. The tenant testified she did not read through the tenancy agreement thoroughly; however, referred to the addendum to that agreement which states no pets unless approved by the manager. Due to this the tenant thought she had gained verbal approval to have two cats. The tenant testified that she had given the landlord a security deposit and had the movers booked to come so still signed the tenancy agreement.

The tenant calls her witness who testified that in the middle of April, 2013 she accompanied the tenant when the tenant was looking for a place to live with her cats. The witness testified that she was present during the viewings and the tenant looked at two units. In one of these that tenant had two cats and in the other unit that tenant had one cat. The landlord showing the units told the tenant that her cats were covered by the security deposit and there was no separate pet agreement. The landlord showing the unit knew about the tenant's cats. This was a cat friendly building.

The landlord cross examined the witness and asked if she said there were two cats in one unit. The witness responded yes two cats. The landlord asked the witness when did she met the landlord as the landlord has never met her, there were no cats in either of the units shown to the tenant and the landlord does not recall ever meeting this witness. The witness responded that they met when the landlord showed the units to the tenant.

The tenant's Advocate referred to the tenant's documentary evidence showing two advertisements for units in this building, the last advertisement is dated September 24, 2014 and states that cats are allowed in the building.

The landlord responded and testified that their pet policy changed around that time. When they took over the building in October, 2012 it was a pet friendly building, but since October, 2012 all tenants have been required to sign a pet agreement and pay a pet deposit unless they have brought pets in without the landlord's permission.

The tenant's Advocate asked the landlord did the tenant approach the landlords about signing a pet agreement and paying a deposit after the new pet policy came into place. The landlord responded, no not until much later.

I asked the tenant why after receiving the first breach letter in May, 2015 did the tenant not comply. The tenant responded that they had just had another hearing and when the tenant came home she found the breach letter and a rent increase notice. The tenant would not get rid of the cats. The tenant testified that she has never hidden the fact that she had two cats. She has often brought in cat food and litter and takes them to the vets in their carriers going through the common areas.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I have considered the wording of the tenancy agreement and the addendum to that agreement. I find the tenancy agreement clearly sets out the terms for keeping pets in the building and states:

Unless specially 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, fur bearing, or otherwise..... This is a material term of the tenancy agreement. The addendum to the tenancy agreement reiterates this point

and states the tenant agrees not to have a pet unless approved by the manager. Both the tenancy agreement and the addendum have been signed by the tenant.

I find as the witness is the tenant's friend, I can place little weight on the witness's testimony and the landlord contradicts both the tenant's and her witness's testimony concerning the tenant's claim that the female landlord had given verbal approvals for the tenant to have cats in her unit. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof In this case the landlord has not met the burden of proof.

However; on a balance of probabilities, I must take into account the wording on the tenancy agreement and even though the wording on the addendum does not clearly state written approval, I do find in accordance to the tenancy agreement that written permission to keep a pet is required. I therefore make a finding that the tenant is bound by the terms of the tenancy agreement and was required to obtain written approval before bringing her cats into the building and to pay a pet deposit.

Furthermore the tenant was notified in writing that she must remove the cats as she is in breach of her tenancy agreement on two separate occasions and failed to comply with these written notices which resulted in the Notice being issued and served upon the tenant.

I therefore find the tenant's application to cancel the Notice must be denied and the Notice remains in force and effect.

The landlord did not orally request an Order of Possession at the hearing. I therefore caution the tenant to comply with the Notice by either removing the cats from her unit as requested by the landlord at this hearing, or vacating the rental unit as the effective date of the Notice of November 30, 2015 has since passed.

Conclusion

The tenant's application is dismissed. The One Month Notice to End Tenancy for Cause dated October 03, 2015 will remain in force and effect.

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: December 10, 2015

Residential Tenancy Branch

