



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes CNC, OLC

Introduction

This hearing was convened in response to an application by the tenant filed on December 29, 2015 to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End / the Notice) dated December 16, 2015.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via their submissions and their testimony. The parties acknowledged receiving the evidence of the other.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons as stipulated in the Notice to End, and that the reasons must constitute sufficient cause for the Notice to be valid. If found the landlord issued a valid Notice to End I must grant the landlord an Order of Possession.

Issue(s) to be decided

Has the tenant failed to comply with a *material term* of the tenancy agreement?

Has the tenant not corrected the alleged breach within a reasonable time after the landlord gave written notice to do so?

Should the landlord's Notice to End be cancelled?

Background and evidence

The undisputed relevant evidence in this matter is as follows. This tenancy began in May 2009. There is a written tenancy agreement governing this tenancy, which includes a term addressing the keeping of pets – **25. Pets**. I have benefit of a copy of the tenancy agreement, and the

parties agree the agreement term clearly states that cats are not allowed. The landlord effectively claims the term is a *material term*, and alleges the tenant has been breaching, and continues to breach the agreement by the keeping of 2 cats. The landlord changed their position on the allowance of cats and informed tenants in writing of the landlord's new position in July 2015. The landlord provided their new position regarding cats and the landlord's new policies stating solely one cat is allowed, and in addition requires the tenant to sign a new tenancy agreement – that allows pets (cats). The tenant is also required to comply with additional policy conditions for a cat to be allowed. The tenant of this matter received a reminder of the landlord's new position on December 10, 2015, and again on December 16, 2015. None the less, on December 16, 2015 the landlord gave the tenant a 1 Month Notice to End Tenancy for Cause with the reason for the Notice indicated as:

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

The tenant testified the landlord's new position may now allow cats but their policy does not allow them to keep their second cat. In addition the tenant testified they have had their cats for several years and one cat for 5 years with the landlord's knowledge and them keeping a cat has not been an issue until the landlord's change allowing cats. The landlord testified they have not known of the tenant's cat(s) for the length of time claimed as this type of knowledge is not always timely. The landlord claims the tenant has been sufficiently notified they must re-home their second cat and comply with the new policies respecting the sole remaining cat, or must vacate in accordance with the Notice to End.

Analysis

It must be noted that **Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms** defines a *material term* as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. It falls to the person relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the referenced term is a material term, and that the onus of establishing that the tenancy should end for breaching a material terms rests on the landlord. The Residential Tenancy Policy respecting material terms further states as follows:

To end a tenancy agreement for breach of a material term the party alleging a

breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

I find that the tenancy agreement is clear that it forbids the keeping of cats. I find the landlord has now changed their position respecting cats and now allows them – and seeks to now abandon the current agreement term – by way of a new agreement – as no longer a term disallowing the keeping of a cat. I find that the term of the tenancy agreement upon which the landlord relies to end this tenancy – **25. Pets** - is not a term that: *the parties both agreed as so important that the most trivial breach of the term gives the other party the right to end the agreement.* Effectively, I find the landlord has clearly established the tenant may be in breach of a term of the agreement but they are not in breach of a *material term*; and, as a result, the landlord's Notice to End the tenancy for breach of a *material term* is not valid. Therefore, the landlord's 1 Month Notice to End Tenancy for Cause dated December 16, 2015 is cancelled and of no effect.

Conclusion

The tenant's application to set aside the landlord's Notice to End **is granted**, and the tenancy continues.

This Decision is final and binding on both parties.

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: February 15, 2016

Residential Tenancy Branch

