



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, AAT, CNC, LAT, LRE, MNDC, MNSD, OLC, O, GG

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause and a monetary order. The other was the tenant's application for an order setting aside that notice to end tenancy; a monetary order; orders limiting the landlord's right of access, authorizing the tenant to change the locks, and allowing access to the or from the rental unit by the tenant or the tenant's guests; orders compelling the landlord to comply with the Act, regulation or tenancy agreement; and return of the security deposit. Both parties appeared and gave affirmed evidence.

At the beginning of the hearing I confirmed the correct spelling of the landlord's name and with the consent of the parties the tenant's application for dispute resolution is amended to reflect the correct spelling of the landlord's name.

Issue(s) to be Decided

- Does the landlord have grounds to end this tenancy?
- Is the tenant entitled to a monetary order and, if so, in what amount?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence

The rental unit is a ground level, one bedroom suite. The upper level of the house is a second rental unit. The entry to the lower unit is through the garage, which is locked. From the garage there is an unlocked door that leads into a small entry. The entrance door of the lower unit is off this entry. In there entry there is also a flight of stairs that goes to the upper unit. Both tenants can lock the doors to their respective units. At the back of the garage is a shared laundry area that is unlocked.

The tenant has shared custody of his 12 year old son. The son spends Wednesdays and every other weekend with his father.

The tenant and his mother looked at the rental unit together. They explained that the tenant's son would be at the unit part-time. The landlord was agreeable to this arrangement.

The landlord testified that he told the tenant that both he and the upstairs tenant stored items in the garage. He explained that the tenant was not to use the garage for his own storage, merely as a means of access to his unit, and asked the tenant to keep the garage door shut and locked.

There is a fireplace in the rental unit. The landlord testified that he explained that the fireplace worked but there was a crack in the chimney which allowed some smoke to enter the upper unit. As the upstairs tenants complained about the smoke he asked the tenant not to use the fireplace.

The tenant testified that the landlord told him to keep the use of the fireplace to a minimum because smoke went into the upstairs unit and bothered those tenants. He testified that it was spring, he did not anticipate using the fireplace for many months, and he liked the unit so he agreed to take it. His mother testified that the landlord told them the smoke bothers the upstairs tenants but he did not say not to use the fireplace.

The landlord testified that he told the tenant the upstairs tenants had a little dog which he did not mind because the upstairs floors had not been refinished. He told the tenant he did not want pets in this unit because he had just installed new laminate floors. The tenant told him he did not have pets and they stroked off the pet damage deposit on the tenancy agreement.

The tenant and his mother both testified that the landlord told them the upstairs tenants had a small dog but did not say anything about not wanting pets in this rental unit or about the new floors.

They testified that the tenant's son has a ferret, who has stayed with the tenant in his previous unit. Both testified that they did not mention this to the landlord when they looked at the unit or when they completed the tenancy agreement. The tenant said he hoped having the ferret at the unit for visits would be okay but he did not discuss this with the landlord. They were both clear that the ferret was not the tenant's pet; it was his son's. They also said there was no discussion about payment of a pet damage deposit.

The tenant and his mother both testified that when they signed the tenancy agreement the notation "no pets" was not written on it and they argued that the landlord had fraudulently added the notation later.

The tenant and his mother argued that based upon the landlord's statement that the upstairs tenants had a pet and that there was no prohibition against pets in the tenancy agreement they concluded that the unit was pet friendly and the tenant would be entitled to have the ferret there.

The landlord testified that on February 26 the tenant signed the tenancy agreement, paid the March rent and paid the security deposit. The tenant's mother was not with him on that occasion. The agreement was for a month-to-month tenancy. The monthly rent of \$850.00, which is due on the first day of the month, included water, electricity, heat and cable. The tenant paid a security deposit of \$400.00. The landlord gave the tenant the keys and he moved in immediately.

On March 1 the landlord and the tenant arranged an appointment for March 2 to complete the move-in condition inspection report.

On March 2 the landlord went to the unit as arranged. He said he had to wait several minutes before the tenant would let him in. When he entered the unit the windows were open; the kitchen fan was on; there was a funny smell in the unit; and there were greasy marks on the floor. Then he saw the ferret.

The landlord was very upset. In the ensuing discussion the tenant told the landlord it was his son's pet. The landlord left.

On March 5 the upstairs tenants told the landlord about a recent incident at the tenant's former home, which is only a block from this rental unit. The upstairs tenants' niece, who lives at the tenant's former address, was the source of the information. The upstairs tenants told the landlord they were not comfortable having the tenant live in the house. The tenant said the "theft" that the previous landlord claimed involved one cigarette.

On March 6 the landlord and the upstairs tenants went to see the tenant. The landlord presented the tenant with a Mutual Agreement to End Tenancy. The tenant got upset; as did the upstairs tenant. The tenant wanted them to leave and when they did not, he called the police. At some point during the argument the tenant and the upstairs tenant touched. The tenant points out that technically, this was an assault. The police attended but no charges were laid.

On March 8 the tenant served the landlord with an application for dispute resolution claiming orders:

- confirming the tenant's right of quiet enjoyment;

- limiting the landlord's right of entry;
- providing the tenant with a copy of the tenancy agreement that did not contain a "no pets" clause;
- requiring the landlord to provide a key for the dead bolt; and
- requiring the landlord to remove anything of value from the garage.

The tenant also asked for the return of the first month's rent and the security deposit for loss of quiet enjoyment.

On March 11 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The tenant accepted the notice at the door of his rental unit. The landlord did not enter the unit.

The tenant amended his application for dispute resolution to include requests for orders:

- setting aside the notice to end tenancy;
- reducing the rent in the amount of \$50.00 per month because he thought he would be allowed pets in the unit;
- reducing the rent in the amount of \$50.00 per month until the chimney was repaired and the fireplace could be used; and,
- compensation in the amount of \$400.00 for the time, effort and stress of the dispute resolution process.

The tenant acknowledged that the landlord has not been to the unit since March 11.

The landlord says he does not know if the ferret is in the unit or not; the tenant says it has been gone since the beginning of March.

There have been no further incidents. The landlord says the upstairs tenants have stayed clear of the tenant and it is an uncomfortable situation. The tenant says the relationship with the upstairs tenants has been cordial.

Analysis

Although the landlord listed many reasons on the 1 Month Notice to End Tenancy the only reason on which a substantial amount of evidence was entered was: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." There is simply not enough evidence to conclude that any of the other grounds listed on the notice have been established by the landlord.

As to the question of whether pets would be allowed in this rental unit I prefer the landlord's testimony that he was very clear they were not. The evidence of the tenant

and his mother is that they were so selective with the information they gave to the landlord and the questions they asked as to be deceptive. It makes no difference if the ferret belongs to the tenant or his son; it is still an animal in the rental unit. When they looked at the unit they made sure the landlord knew and was agreeable to the son staying with the tenant on a part-time basis. The only reason I can see for not making the same simple inquiry about the son's ferret was so they could later make the claims they did in this hearing.

I find that "no pets" was a material term of the tenancy agreement. However, there is no evidence to contradict the tenant's testimony that the ferret was removed promptly and has not been in the rental unit since. Accordingly, I find that the tenant did remedy a breach of a material term within a reasonable time. The 1 Month Notice to End Tenancy for Cause dated March 11, 2016 is set aside and the tenancy continues until ended in accordance with the legislation. The tenant should be aware that any future visit by the ferret or any other animal without the landlord's consent obtained in advance and payment of a pet damage deposit will be grounds for ending this tenancy.

As this is a "no pets" rental, no rental reduction will be awarded for that fact.

Heat is included with the rent so the fireplace is strictly an ornamental feature of this unit. Once again, I find that the landlord was clear that the fireplace was not to be used before the tenant agreed to rent this unit. The tenant's claim for a rent reduction because the fireplace is not be used is dismissed.

No order limiting the landlord's right of entry will be made. There has only been one minor incident and not a repeated course of action by the landlord.

No order will be made requiring the landlord or the upstairs tenants to remove their items from the garage. The tenant accepted this situation when he agreed to rent the unit. If any party has concerns about this situation, they will have to conduct themselves accordingly.

I dismiss the tenant's claim for loss of quiet enjoyment. There was a dispute at the beginning of this tenancy, brought on because the tenant was less than truthful about his son's pet. As far as the "assault" by the upstairs neighbour I attribute the same weight to it as the tenant attributed to the "theft" allegation by his former landlord.

Regarding the tenant's claim for keys for the deadbolt, the evidence on this issue was given at the end of a long hearing and was not very clear. If keys remain an issue, the tenant has leave to re-apply.

There was no evidence that the tenant's right of access to the rental unit has been denied so his application for an order allowing access by he or his guests is dismissed.

As explained to the parties in the hearing the *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence or participating in a dispute resolution proceeding. This part of the tenant's claim is also dismissed.

Conclusion

For the reasons set out above

- a. The 1 Month Notice to End Tenancy for Cause dated March 11, 2016 is set aside and the tenancy continues until ended in accordance with the legislation.
- b. All other claims by the tenant are dismissed.
- c. As the tenant was partially successful on his application I find that he is entitled to reimbursement of half the fee he paid to file his application, namely \$50.00, from the landlord. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.

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: April 29, 2016

Residential Tenancy Branch