



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, MNDC, O, OLC

Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; orders for compliance; a Monetary Order for damage or loss; and, other remedies. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the parties had a previous dispute resolution proceeding concerning the tenant having pets in the rental unit and issuance of a 1 Month Notice to End Tenancy for Cause. The matter before me deals with a second 1 Month Notice that the landlord has issued with respect to the tenant having pets, although the reason indicated on the second 1 Month Notice is different. Aside from hearing submissions concerning the issuance of the second 1 Month Notice on April 27, 2016, a significant portion of the hearing time was spent in an attempt to facilitate a resolution between the parties for this on-going dispute. Due to time constraints, I did not hear the request for monetary compensation and it is dismissed with leave.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause dated April 27, 2016 be upheld or cancelled?
2. Is it necessary and appropriate to issue orders for compliance?

Background and Evidence

The tenancy commenced on July 18, 2008. The tenant is required to pay her portion of subsidized rent on the first day of every month. Clause 25 of the tenancy agreement prohibits the tenant from having certain pets in the rental unit, and certain other types of pets may be acquired where the tenant has paid a pet damage deposit and has obtained the landlord's written consent. The tenant did not have the landlord's written consent to acquire pets, did not pay a pet damage deposit, and in 2011 the tenant acquired a dog and in 2014 the tenant acquired a cat and a snake.

The landlord subsequently changed its pet policy and its current tenancy agreements permit a tenant to have one pet with the landlord's prior written consent and after the tenant pays the pet damage deposit. The landlord has requested that the tenant enter into a new tenancy agreement and follow the landlord's current pet policy. The tenant has not agreed to do so, in part, because she has three pets to which she and her son are attached.

The tenant's acquisition of three pets and whether that was a basis for ending the tenancy due to a breach of a material term of the tenancy agreement was the subject of the previous dispute resolution proceeding (file number referenced on cover page of this decision). It decided by Arbitrator on March 22, 2016 that the landlord failed to establish that the tenant was in breach of a material term of her tenancy agreement and cancelled the 1 Month Notice that was the subject of that proceeding. Arbitrator Mitchell went on to suggest the "exploration of possible solutions which could in time lead to full compliance with the landlord's new policy" and that the parties were encouraged to explore a resolution of the dispute between them.

I heard that there was no further exploration of a possible solution by way of mutual agreement and that on March 31, 2016 the landlord issued the tenant another written demand for her to comply with the landlord's new pet policy by signing a new tenancy agreement; re-homing two of her pets; ensuring the remaining pet is spayed/neutered; and, paying the pet damage deposit of \$525.00. I heard that this was the third letter of its kind, with the two previous letters being issued prior to the last dispute resolution proceeding.

The tenant is of the position that the landlord has not changed from its position despite the last dispute resolution proceeding that was in the tenant's favour. The tenant also submitted that the landlord's demands are unreasonable considering the tenant had been given express oral consent from one of the landlord's agents to keep the dog in 2011. Accordingly, the tenant did not comply with the landlord's final demand letter of March 31, 2016.

On April 27, 2016 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause with a stated effective date of May 31, 2016 indicating the landlord was ending the tenancy for the following reason: "*Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement*".

The landlord acknowledged that the reason indicated on the 1 Month Notice dated April 27, 2016 does not exactly fit the situation since the landlord has not given consent for the tenant to have a pet but that reason was indicated as there were no other reason on the 1 Month Notice that was more applicable. The landlord maintains the position that the tenant violated her tenancy agreement by acquiring pets that were prohibited and without written consent from the landlord to acquire the pets. The landlord acknowledged that the only solution the landlord is prepared to entertain if the tenant complies with the new pet policy; otherwise, the tenancy must end. The landlord's cited concerns over allowing this tenant to have more than one pet and not comply with the current pet policy when other tenants are not permitted to do so.

The tenant stated that she is willing to work toward a solution with the landlord but the landlord remains inflexible. The tenant stated that she is willing to pay the pet damage deposit in exchange for written consent to keep the three pets she currently has. The tenant was agreeable to not acquiring any new or replacement pets when the pets she currently has either die or no longer live in the rental unit. The tenant stated her cat is spayed and the snake is not exposed to another snake so reproducing is not an issue for these two pets. As for the dog, the dog is not spayed; however, the tenant claims to take precautions when the dog goes into season. The tenant stated that the dog weighs less than five pounds, is approximately 10 years old and has health issues that may make it detrimental to have the dog spayed. Nevertheless, the tenant stated that she is willing to look into the possibility as to whether her dog could withstand the surgery, in time, given the cost to do so.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The Notice served upon the tenant on April 27, 2016 corresponds to section 47(1) which provides that a tenancy may be ended where:

- (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;

[Reproduced as written with my emphasis added]

Clause 25 of the tenancy agreement executed by the parties provides that a pet will only be permitted by the landlord after the payment of a pet damage deposit. However, the requirement to pay a pet damage deposit before the pet is permitted contradicts section 20(c)(ii) of the Act. Section 20 provides restrictions on the landlord ability to require deposits. With respect to pet damage deposits, it provides:

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

...

- (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;

[My emphasis added]

Section 6 of the Act provides that where a term in a tenancy agreement conflicts with or contradicts the Act, the term in the tenancy agreement is not enforceable. Accordingly, I find the requirement for the tenant to pay a pet damage deposit before obtaining consent from the landlord is a non-compliant term of the parties' tenancy agreement and it is not enforceable.

In keeping with requirements of section 20(c)(ii) of the Act and considering section 47(1)(a) provides that a tenancy may be ended if the tenant fails to pay a pet deposit within 30 days, I find that the landlord may not issue a 1 Month Notice under section 47(1)(a) unless at least 30 days has elapsed since the landlord has agreed that the tenant may keep a pet on the property.

In this case, the landlord argued that the landlord has not yet given consent for the tenant to keep any of her pets on the property. Based upon the landlord's own arguments I find that it was premature for the landlord to seek an end to the tenancy for failure to pay a pet damage deposit. Therefore, I find the landlord was not in a position to issue the 1 Month Notice that was served upon the tenant on April 27, 2016 and I grant the tenant's request to cancel it.

With a view to assisting the parties resolve their on-going dispute, **I authorize and order that upon giving the tenant written consent to keep a pet on the residential property, if ever, the tenant will be required to pay a pet damage deposit within 30 days of receiving that written consent. I further authorize and order that the tenant's failure to do so would be a basis for issuing a 1 Month Notice under section 47(1)(a) and/or 47(1)(l) which allows a landlord to end a tenancy where the tenant fails to comply with an order of the Director within 30 days.** Despite hearing the tenant has financial limitations, it is important to consider that there is no exemption from the tenant's obligation to pay a pet damage deposit by the time limit for doing so under the Act despite the tenant's personal financial situation. Accordingly, the tenant would be well served to prepare herself financially for the requirement to pay a pet damage deposit.

While I appreciate the landlord's desire and concern for having consistent application of rules to all tenants within the same residential property, it is important to recognize that each tenancy is independent of other tenancy agreements with other tenants and the outcome of a dispute resolution proceeding turns on its merits of each particular case. Accordingly, the desire to achieve consistency is not a basis under the Act to end a tenancy. Upon hearing that the tenant has received three breach letters and two Notice to End Tenancy concerning the same matter: the keeping of pets on the residential property, and the landlord has now had two hearings whereby the landlord has been unsuccessful, I find it appropriate to caution the landlord that

continued issuance of breach letters and Notices to End Tenancy citing the same requirements that have already been demanded of the tenant may be viewed as a form of harassment and a basis for awarding compensation to the tenant. The landlord would be well served to consider its standing and options before issuing another breach letter and/or Notice to End Tenancy to this tenant with respect to her keeping pets on the property. Perhaps, the proposals put forth by the tenant during the hearing will be further considered with a view to resolving this dispute in the long term.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated April 27, 2016 has been cancelled and the tenancy continues. I have issued orders and cautions to the parties with respect to the tenant keeping pets on the residential property.

The tenant's monetary claim was not heard and was dismissed with leave.

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: June 17, 2016

Residential Tenancy Branch