



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the Act set aside and to recover the filing fee for this application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is the tenant entitled to have the notice to end tenancy set aside?
Is the tenant entitled to the recovery of the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about February 1, 2011. Rent in the amount of \$954.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$435.00. The landlord stated that the tenant obtained a dog without permission from the landlord as stated in their tenancy agreement. The landlord stated that the tenant got the dog in March 2015. The landlord stated that the tenant was immediately warned about the dog as there were numerous complaints about the dog shedding hair throughout the halls, barking at all hours of the day and night and an odor emanating from the dog.

The landlord stated that the tenant was verbally warned many times that the building had a no pet policy and that there were complaints about the dog. The landlord stated that they received complaints from some tenants that the dog was a threat to their health. The landlord stated that the tenant ignored their requests to get rid of the dog and were forced to issue a One Month Notice to End Tenancy for Cause based on:

- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord,
- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlord requests an order of possession.

The tenant gave the following testimony. The tenant stated that she adamantly disputes the allegations of the landlord and that the much of their documentation and testimony is a fabrication of lies. The tenant stated that she has had her dog since March 2014. The tenant stated that the manager was very aware that she did have a dog but never mentioned that it was a problem. The tenant stated that the manager never gave her any verbal or written warnings or brought to her attention that there were complaints about the dog. The tenant stated that numerous tenants have pets in the building.

The tenant stated that in March 2016 she made a complaint to the manager about her neighbor that was chain smoking on the adjacent balcony to the tenants. The tenant stated that only after she kept insisting to the manager that she enforce the no smoking policy of the building was she told she had to get rid of her dog or move. The tenant stated that her dog is a therapy dog that helps patients in hospitals to recover from illness and injury. The tenant stated that it is a requirement that her dog be extremely clean and not shed hair near patients. The tenant stated that the landlord has only issued the notice to end tenancy as a form of retaliation for her insisting that they enforce the no smoking policy and because she has made complaints about substandard repairs the landlords' handyman has conducted. The tenant stated that the landlords' documentation is suspect and that some of it has dates listed in the future which is impossible; clearly showing that their documentation is fabricated and should not be relied upon.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's application and my findings are set out below.

When a landlord issues a notice under Section 47 of the Act they bear the responsibility of providing sufficient evidence to support the issuance of the notice. The landlord has failed to do that based on the following reasons. The landlord stated that they had received numerous complaints about the dog and submitted those letters for this hearing. However, many of those letters were a form letter generated by the landlord

asking the tenants if it was fair for someone to have a dog in the building and had a space for the tenants to sign.

The letters did not make specific complaints about the dog being a health hazard, threat, shedding hair, emitting odor or making noise; I give these letters little weight. In addition, the date on one of the letters is dated in the future bringing into question the validity of that notice. Furthermore, the landlord did not illustrate how the tenants' dog was a threat or how it unreasonably disturbed others. The landlord was unclear as to when the tenant obtained the dog and when the actual complaints were made. The landlords did not dispute the tenants' testimony that she had never been shown these letters of complaint until the landlord issued the notice to end tenancy. Conversely, I found the tenant to be clear concise and credible. The tenant provided documentation that she had the dog since March 2014 further bringing into question the landlords recall of events and timeline. Based on all of the above and on a balance of probabilities the landlord has not provided sufficient evidence to support the issuance of the notice on either ground and accordingly, I hereby set aside the One Month Notice to End Tenancy for Cause dated May 9, 2016.

As the tenant has been successful in this application they are entitled to the recovery of their \$100.00 filing fee. The tenant is entitled to a one time rent reduction of \$100.00 from the next rent payable to satisfy that claim.

Conclusion

The notice to end tenancy is set aside. The tenancy continues on the original terms and conditions.

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 09, 2016

Residential Tenancy Branch