



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MT CNC FF O
Landlord: OPC OPB MND FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application was received at the Residential Tenancy Branch on June 8, 2016 (the “Landlord's Application”).

The Landlord applied for the following relief pursuant to the *Act*: an order of possession for cause; an order of possession for breach of an agreement with the Landlord; a monetary order for damage to the unit, site, or property; and an order granting recovery of the filing fee.

The Tenant's Application was received at the Residential Tenancy Branch on June 6, 2016 (the “Tenant's Application”).

The Tenant applied for the following relief pursuant to the *Act*: an order allowing the Tenant more time to make an application to cancel a notice to end tenancy; and order cancelling a 1 Month Notice to End Tenancy for Cause, dated May 18, 2016 (the “1 Month Notice”); an order granting recovery of the filing fee; and an order granting a rent reduction.

The Landlord attended the hearing on her own behalf. The Tenant attended the hearing on her own behalf, and called one witness, L.L., to give testimony. All parties giving evidence provided their solemn affirmation.

Both parties acknowledged receipt of the others' evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever all issues unrelated to the status of the tenancy and entitlement to recovery the filing fee. The parties are granted leave to reapply for monetary relief at a later date.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The tenancy agreement submitted by the Landlord was not fully legible. However, the parties agreed they entered into a fixed-term tenancy that began on December 13, 2014 and ends on July 15, 2016. The Tenant pays rent in the amount of \$1,875.00 per month. At the beginning of the tenancy, the Tenant also paid a security deposit of \$937.50 and a pet damage deposit of \$500.00.

The parties do not agree about what happens at the end of the fixed term. The Landlord testified the Tenant agreed to vacate the rental unit at the end of the fixed term. The Tenant submitted the tenancy continues.

The Landlord's Claims

The Landlord claimed the Tenant breached a material term of the tenancy agreement by limiting access to the rental unit for repairs or to show to a potential purchaser, and by doing everything in her power to make the house unattractive to a potential purchaser.

The Landlord also submitted the Tenant breached a material term of the tenancy agreement by permitting a temporary house-sitter to keep her dog in the rental unit. The Landlord advised the dog urinated on an absorbent pad in a closet in the rental unit and provided photographs in support.

The Landlord testified that, as a result of these alleged breaches, she served the 1 Month Notice by registered mail on May 20, 2016. The Tenant claims it was not received until June 3, 2016, after returning from a trip to visit family in Nova Scotia.

The Landlord provided documentary evidence in support of her claim. Most of the evidence submitted consists of email exchanges between the parties, or notice letters regarding access to the rental unit.

The Landlord testified the rental property has recently been sold.

In reply, the Tenant denied refusing access to the Landlord or a realtor for the purpose of showing it to potential purchasers.

The Tenant did acknowledge, however, that she refused the Landlord access to show the property to prospective tenants. As noted above, the parties disagree about what happens at the end of the tenancy. However, that matter is not before me and I make no finding in that regard.

The Tenants' Claims

The Tenant seeks an order cancelling the 1 Month Notice.

As noted above, she says she did not impede access to the property when it was to be shown to potential purchasers. She did, however, required notice to be given in accordance with the *Act*.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Landlord's Claims

The Landlord seeks an order of possession based on the 1 Month Notice. The reason indicated for ending the tenancy is a breach of a material term of the tenancy agreement.

Residential Tenancy Guideline #8 elaborates on the meaning of a material term. It states:

“A material term is 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.”

I find there is insufficient evidence to conclude the Tenant breached a material term of the tenancy agreement. Although it appears from the email communications submitted into evidence that the Tenant was zealous about receiving notice that complied with the *Act*, I find it was not sufficient to impede access to the property. The property has now been sold.

In addition, I note the Landlord provided with documentary evidence which included photographs of the interior of the rental unit, so access was not completely prevented.

Finally, I also find the second dog being kept by a house-sitter in the rental unit is not a breach of a material term of the tenancy agreement.

It may be that the Landlord is entitled to an order of possession based on the tenancy agreement or repeated late payments of rent, but those matters are not before me.

Accordingly, the Landlord's request for an order of possession for breach of a material term is dismissed and the tenancy continues unless otherwise ended in accordance with the *Act*.

As the hearing dealt with only a portion of the parties' claims, and the Landlord was not successful, I decline to award recovery of the filing fee to the Landlord.

Tenant's Claims

As the Landlord's Application has been dismissed, it is not necessary for me to consider the Tenant's claim for an order cancelling the 1 Month Notice further.

As the hearing dealt with only a portion of the parties' claims, I decline to award recovery of the filing fee to the Tenant.

Conclusion

The Landlord's Application for an order of possession based on the Tenant's breach of a material term of the tenancy agreement is dismissed. The Tenancy continues unless otherwise ended in accordance with the *Act*.

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: July 12, 2016

Residential Tenancy Branch