



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 dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause and for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and had opportunity to be heard. The landlord acknowledged receipt of evidence submitted by the tenant. Both parties gave affirmed testimony.

Issue to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on July 18, 2008. A copy of the tenancy agreement was filed into evidence. The monthly rent as per the agreement is \$1,339.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$670.00.

The accommodation is subsidised housing and is allotted and rented based on a tenant's income and family size. Currently, the tenant's portion of the rent is \$510.00. The tenant filed evidence that indicates that the current economic rent is \$1,051.00 and the tenant receives a subsidy of \$541.00.

During the hearing the parties discussed the multiple prior hearings that they had attended to resolve disputes related to the number of pets the tenant could have in the rental unit and the pet deposit that was required to be paid.

In a decision dated June 17, 2016 the Arbitrator ordered the landlord to provide the tenant with a written consent to keep a pet in the rental unit and the tenant would be required to pay a pet deposit within 30 days of receipt of the written consent.

On July 12, 2016, the landlord served multiple tenants of the residential complex, with letters informing them that the landlord had decided to grandfather tenants with existing pets, on certain conditions. In a letter dated July 28, 2016, the landlord gave the tenant written permission allowing the tenant to have a single pet dog in the rental unit. The letter also requested the tenant to find a home for her other two pets and to pay a pet deposit in the amount of \$669.50 by September 04, 2016.

In an undated letter, the tenant replied to the landlord thanking the landlord for allowing her to keep her pet dog in the rental unit and stating that she would not be finding a home for her other pets. The tenant enclosed a cheque in the amount of \$525.00 which would cover the pet deposit according to the current economic rent.

The landlord returned the cheque to the tenant informing her that the amount of the cheque was insufficient and reminded the tenant that the amount of the pet deposit that had to be paid was \$669.50. The tenant did not pay the additional amount requested by the landlord and therefore on October 22, 2016, the tenant was served with a notice to end tenancy for cause.

The reasons for the notice were that the tenant has not complied with an order under the legislation and the pet deposit was not paid within 30 days as required by the tenancy agreement. The tenant disputed the notice in a timely manner.

Analysis

In order to support the notice to end tenancy, the landlord must prove the ground alleged, namely that the tenant has not complied with an order under the legislation and the pet deposit was not paid within 30 days as required by the tenancy agreement.

The parties could not agree on the amount of the pet deposit. The tenant relied on *Residential Tenancy Policy Guideline # 31* that addresses pet deposits while the landlord relied on s.19 of the *Residential Tenancy Act*, which also addresses limits on amounts of deposits

The following is an excerpt from the Policy Guideline:

How much is the deposit?

A landlord can require a deposit of up to one-half month's current rent as a pet damage deposit, regardless of the type or number of pets. This amount is in addition to any security deposit that may also be required by a landlord³.

³ RTA, s. 19

Section 19 of the *Residential Tenancy Act* states the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

The tenant's position was that she was required to pay half the current month's rent as per the policy guideline which would make the deposit an amount of \$525.00. The landlord's position was that the tenant is required to pay half of one month's rent payable under the tenancy agreement which would make the deposit \$669.50.

The Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

The *Residential Tenancy Policy Guideline* provides general information about the *Residential Tenancy Act* and Regulation. Where the Act and this guide differ, the Act prevails

In this case, the *Act* states that the amount of a pet deposit must not be greater than the equivalent of half of one month's rent payable under the tenancy agreement. Since the rental amount in the tenancy agreement is \$1,339.00, the tenant is required to pay a pet deposit in the amount of \$699.50.

Even though the tenant did not make payment in this amount, the tenant did make a payment in the amount that she believed was the correct amount, within the legislated time frame of 30 days. The landlord returned the cheque.

I find it appropriate to set aside the notice to end tenancy in order to give the tenant another opportunity to pay the pet deposit in the correct amount. The tenant has paid a security deposit of \$670.00 and therefore the pet deposit should be \$699.00, to make the total of the deposits equal to one month's rent payable under the tenancy agreement.

The tenant must pay this amount to the landlord within 30 days of receipt of this decision. If the tenant fails to comply, the landlord may serve the tenant with a notice to end tenancy for cause.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.

The tenant must pay a pet deposit of \$699.00 within 30 days of receipt of this decision.

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: December 14, 2016

Residential Tenancy Branch