



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on November 14, 2016.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy. The balance of the tenants’ application is dismissed, with leave to reapply.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on September 7, 2009. Rent in the amount of \$1,400.00 was payable each month.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2016.

The reason stated in the Notice was that the tenants have :

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants took possession of the rental unit in 2009. The landlord stated that the tenants were told that no pets are permitted under the strata bylaws. The landlord stated in 2015, the tenants obtained a pet without their written consent and they have now been receiving weekly fines from the strata which have now accumulated over \$2,000.00.

The landlord testified that in 2015, the strata was considering an amendment to the bylaws to allow pets; however, the tenants prematurely obtained a pet in the summer of 2015. The landlord stated at that time the tenant indicated to the strata president if the bylaw does not change that they will move out. Filed in evidence e is a sworn affidavit of DO, the strata president.

The landlord testified the strata bylaw was not changed and the tenants have refused to remove the pet after written notice was provided to the tenants on September 20, 2015, and again on March 11, 2016, which also showed the fine for breaching the bylaw was \$50.00 every 7 days and would continue until the pet was removed.

The landlord testified that they did not have a written tenancy agreement; however, it was clear at the start of the tenancy that pets are not permitted and it was six years later that the tenants obtain a pet without their written consent.

The tenant's agent testified that there is no written tenancy agreement. The tenant's agent stated that other people in the building have pets. The tenant's agent stated that the tenant has only received two letters from the strata regarding their dog.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has sufficient evidence to show that the tenants have:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Section 12 of the Act, states that the standard terms are terms of every tenancy agreement whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and whether or not the tenancy agreement is in writing.

The tenancy commencing in 2009, at the time the tenancy commenced the tenant was told that they were not allowed pets as it was contrary to the strata bylaws. In 2015 the strata was attempting to amend the bylaw to allow pets and a vote was held; however the amendment to the strata bylaw was defeated.

In this case, the tenant obtained their pet in 2015, prior to the strata counsel making a ruling on whether pets are permitted. However, even if the bylaw was amended to allow pets, which they were not, the tenant did not have the right to obtain a pet at any time without the written consent of the landlord. Although there may be other occupants in building that are in breach of the strata bylaw, that is not for me to consider.

I accept that there is no written tenancy agreement and therefore could not be a material term of the tenancy agreement, as a material term must be in writing which both parties agreed to at the start of the tenancy and that any breach would give cause to end the tenancy. Therefore, I find it appropriate to cancel the Notice as this was not a material term of a tenancy agreement.

However, even though I have found there was no material terms of a tenancy agreement that does not give the tenants the right to do as they chose. I find it was a term of the tenancy agreement that no pets were permitted when they entered in to the tenancy agreement in 2009, whether or not that was made in writing. I find the tenants

are obligated to comply with that agreement as it would be unfair and unreasonable to the landlord to allow the tenants to continue to breach the agreement and the strata bylaws, by allowing the pet to continue to reside in the premises.

Therefore, I find it appropriate to make the following order.

I order the tenants to remove the pet from the premises no later than January 31, 2017, pursuant to section 62 of the Act. Should the tenants fail to comply with my order, the landlord is at liberty to issue a new notice to end tenancy for non-compliance with my order. The tenants were informed during the hearing that they must comply with the above order by the date indicated.

Further, as the tenants were aware the bylaw was not approved in 2015 and fines are accumulating, **I find the tenants are responsible for all strata fines** relating to their pet as it would be unfair to the landlord to be responsible for these costs. Should the parties not come to their own agreement on payment, the landlord is at liberty to make an application for monetary compensation in regards to the pet related strata fines for the entire term of this tenancy. The landlord may submit as evidence a copy of this decision.

Conclusion

The tenants' application to cancel the Notice, issued on November 11, 2016, is granted.

The tenants are cautioned if they failed to comply with my order to have the pet removed from the premises **no later than January 31, 2017**; the landlord is at liberty to issue a new notice to end tenancy.

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: January 06, 2017

Residential Tenancy Branch